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GUIDE

TO THE

LAW AND LEGAL LITERATURE

OF

GERMANY

BY

EDWIN M. BORCHARD

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PREFATORY NOTE

The growing demand on the part of American lawyers, legislators, and jurists for a knowledge of the legal institutions of foreign countries has induced the Library of Congress to acquire and make available to the investigator a library of comparative law in which he may find the important legal literature of the civilized States of the world. This guide, the first of a series of guides to foreign law, has been prepared with a view to furnish the investigator of German law with an aid in using this material.

The necessities of the lawyer consist in ascertaining the legal rules under which private individuals and their rights are governed in Germany. This need the guide endeavors to meet by a detailed treatment of the institutions of German private law in its various branches. The interests of the legislator have been kept in view by an extensive discussion of the literature dealing with the methods adopted in Germany to solve the social and economic problems of the day. Special attention has therefore been given to German legislation on social insurance and labor, to the preparation of legislation, and to modern research on the legal treatment of crime. Finally, a recognition of the value to the jurist of the contributions of German literature to the development of modern juristic thought has served to lay emphasis on the sections dealing with legal education and the history and the philosophy of law.

This guide, therefore, is an attempt to furnish the American lawyer with an introduction to the literature of German legal institutions and German juristic thought. Leading works only are mentioned. Wherever possible, attention has been called to important contributions, both in the way of books and periodicals, in the English language; otherwise, except for a few standard works in French, the literature discussed is confined to the German. A glossary of technical legal terms, in which the terminology adopted by Schuster has been generally retained, is printed as an appendix. As the glossary serves to give the English equivalents for German terms, the subject entries in the index are confined to the English legal terminology. In the matter of capitalization in the titles of books the A. L. A. catalogue rules have been followed.

For the present, works on the law of the individual German States are not referred to, with an occasional exception in the case of Prussia. Works on Roman law, except such treatment of the Pandects as may be considered an introduction to modern German law, and in general, works on comparative law and international law, are omitted.

This occasion is taken to express the author's thanks and appreciation to Judge Karl von Lewinski, secretary of the Internationale Vereinigung für Vergleichende Rechtswissenschaft of Berlin, and to Prof. W. F. Dodd of the University of Illinois for their kindness in reading the manuscript and for their valuable suggestions.

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Librarian of Congress
Washington, D. C., April, 1912

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GUIDE TO THE LAW AND LEGAL LITERATURE OF GERMANY

INTRODUCTION

International intercourse, in commerce, travel, and scholarship, has brought about, to the great advantage of universal knowledge, a better understanding of the conditions under which the people of foreign countries live. The ever increasing presence of Americans abroad and the constant tendency of commerce to become more international have emphasized the necessity of knowing the legal conditions which prevail in foreign countries. Moreover, our gradual recognition of the truth of Jhering's thesis that law is not wholly, nor even mainly, a national product makes more than desirable an acquaintance with foreign juristic thought.

The law and legal literature of Germany have been selected for treatment in our first guide for several reasons: First, of the countries not subject to the common law, Germany is the most important commercially; secondly, its efforts to solve the social and economic problems of the day have elicited well-earned admiration; thirdly, in legal science, German research in the last generation has intensified the truth of Sheldon Amos' remark made forty years ago:

> The prospects of the science of jurisprudence . . . will depend largely upon a greater familiarity than has hitherto been encouraged in legal education, with the vast and invaluable juridical literature of Germany . . . Modern jurisprudence is emphatically a German creation. (Science of jurisprudence, p. 505.)

For the practitioner a knowledge of foreign law and how to find it is of importance because of the constant growth in international commercial relations, and because of the increasing

number of nationals resident abroad temporarily or permanently, who marry there, enter into other legal relations of every description, and leave estates.

For the legislator the practical value of comparative law appears by an examination of the various ways in which economic and social problems have been dealt with abroad. The recent investigations, by various Federal commissions, of the European solutions of certain economic problems, the researches into foreign social legislation by our national and State legislatures, the investigation of the methods adopted abroad for the legal treatment of crime, all illustrate our gradual emancipation from an insular view of legal institutions and a recognition of the practical value of profiting from the experiments of others.

For the jurist, however, a knowledge of the contributions of continental Europe, and especially of Germany, to legal science, is of still greater importance. Only in recent times have we begun to lose our indifference to the progress of the science of law abroad and to awaken to a realization of its practical importance. Social legislation during the last generation and researches into legal history have created a revolution in the concept of law and of its relation to social and political science, from which it springs and to whose development it ministers.

Coke admired the common law for its certainty, because derived from actually decided cases, and disparaged the civil law for its uncertainty, as evidenced in the disputations of legal scholars. The applicability of this characterization of the two great systems of law has, in the course of time, become almost reversed. The thousands of decided cases since Coke's day, "the tangled mass of irreconcilable contrarieties" has, as Bryce puts it, created the two great defects of case law, uncertainty and an utter lack of system, which in turn have been imparted to the whole structure of Anglo-American

law. Pollock's characterization of English case law as "chaos tempered by Fisher's Digest" is, with aggravated reason, applicable to this country: American case-law as a whole may not unfairly be described as chaos, tempered by the digests of enterprising publishing companies. Finding the law has to a great extent become a mechanical process in which legal thinking is reduced to a minimum and in which catchwords have replaced legal principles.

Maitland expressed his appreciation of the unsatisfactory state of English law in these words:

> But turn from laws to law. Turn from bits of our legal system to the system as a whole. Do we often think of it? Do we often ask ourselves whether it compares well with its neighbors and rivals, whether it is in all respects rational, coherent, modern, worthy of our country and our century? I fear that we do not. (Collected Papers III, pp. 474–475.)

What then can we say of our fifty sovereign jurisdictions, our mass of conflicting decisions, our multiplicity of legal rules applied to an identical state of facts? In England, Bryce tells us, the efforts at codification were given up in despair. In this country, we have been more courageous; the project of an American *Corpus Juris* has enlisted much popular support. Any attempt to lead us out of our "judicial detritus" will be greeted with favor. And yet, one of our foremost jurists, Wigmore, has expressed grave doubts as to its timeliness, its soundness, and its feasibility. As a profession, American lawyers are almost wholly untrained in that technique of legal science which must precede any attempt at systematic statement of the law. Our law has grown up so rapidly and so heterogeneously that it is almost impossible now, in many important branches, to find any thread of legal principle. To a philosophy of law, we are practically total strangers. Again, as Pound has pointed out, much of our common law, e. g., the assumption of risk, liberty of contract, the right to pursue a lawful calling, etc., is academic, because derived by deduction from historical premises which have lost

their value and hence much of their meaning for the society of to-day. The traditional attitude of the common law toward legislation, indeed, has often proved a serious obstacle to social progress.

What, on the other hand, has been the fruit of the years of disputation of continental jurists? It is this: they have worked out a scientific body of law, a system of principles supported by a sound philosophy, which, as exemplified in the German Civil Code, has awakened the admiration of the civilized world. They have brought to active realization Holmes' declaration that the true science of the law consists mainly in the establishment of its postulates from within upon accurately measured social desires, instead of tradition. Maitland in the introduction to his translation of Gierke's *Political theories of the middle age* says of the German Civil Code that "it is the most carefully considered statement of a nation's laws that the world has ever seen." German codification truly exemplifies a power of legal expression with which Bryce credits the Roman jurists—"the power of so framing general rules as to make them the expression of legal principles, and of working out these rules into their details so as to keep the details in harmony with the principles." (Studies, II, p. 208.)

In Europe the application of the historical and comparative method to jurisprudence has created a school of jurists who have helped to make law an effective handmaid in the development of social and political science in general. The great economic and social problems now before our country require, therefore, something more than an outworn insular conception of law. They require a jurisprudence of vitality, fashioned to meet social ends as a regulative agency in the adjustment of individual interests, and a legal philosophy which shall draw its force from Mr. Justice Holmes' "secret root" of the law—the conscious recognition of social utility.

BIBLIOGRAPHY

The most useful bibliography of the legal literature of Germany, covering the period from the middle of the eighteenth to the middle of the nineteenth centuries is the *Bibliotheca juridica*, first edited by Theodore C. F. Enslin, and published in a second edition, with a supplementary volume, by Wilhelm Engelmann (Leipzig, W. Engelmann, 1840, 1849). In addition to its exhaustive bibliographic information, the work is provided with a brief subject catalogue. The period from 1849 to 1867 is covered by G. W. Wuttig's *Bibliotheca juridica* (Leipzig, O. A. Schulz, 1867). The work includes a subject catalogue and a summary of the contents of the important periodicals published during the period covered. The firm of Manz & Co. in Vienna published a *Bibliotheca juridica* in 1871 (5th ed.) which was intended to catalogue the most important legal literature of Germany and Austria in print at that time.

The bibliographies of modern German law may be said to commence in 1868 with the appearance of Mühlbrecht, *Übersicht der gesammten staats- und rechtswissenschaftlichen literatur*, published by Puttkammer and Mühlbrecht in Berlin. It is issued bimonthly and appears each year as a bound volume under the title *Allgemeine bibliographie der gesammten staats- und rechtswissenschaftlichen literatur*. The separate numbers are somewhat tardy in appearance. While primarily important for the German literature, it contains sections devoted to English, French, Spanish, and Scandinavian legal bibliographies. Mühlbrecht also compiled a *Wegweiser durch die neuere literatur der rechts- und staatswissenschaften*, which appeared in two volumes, the first volume (second edition) in 1893 and the second in 1901; this is largely a subject bibliography of the titles in the annual volumes which appeared up to 1900. The *Juristisches literaturblatt*, edited by Alfred Keil (published by C. Heymann in Berlin, ten parts per year, beginning 1894),

contains short critical bibliographies on special subjects, as well as extensive book reviews. The *Juristische novitäten* which has appeared annually since 1895 (editor, J. A. Barth; publisher, M. Dietrich, Leipzig), is a critical review of decisions of importance; it includes lists of recent books both German and foreign. A valuable publication was that inaugurated by Prof. Kirchenheim in 1881, entitled *Centralblatt für rechtswissenschaft* (Leipzig, Hinrichs). It consisted of book reviews, summaries of the contents of periodicals and lists of the new German and foreign works on law. In September, 1910, it ceased publication, its activities being taken over by the *Internationale bibliographie der rechtswissenschaft*, which by its addition of indexes to periodical articles and its subject classification promises to be the most important modern bibliography of law. This publication, which appears monthly, also takes account of works and periodical articles in foreign languages. It is published by the *Internationales Institut für Bibliographie der Rechtswissenschaft.* Since January, 1911, this bibliography is issued in five different languages, including an American edition (*Bibliography of legal science*) edited by Edwin M. Borchard (University of Chicago Press). The *Kritische blaetter für die gesammten sozialwissenschaften* (Berlin, Zentralverlag) began publication in 1905, dropping the first word from its title in 1908. Since January, 1911, monthly numbers of this publication also appear in English under the title *Bibliography of social science* (Chicago, University of Chicago Press). It takes note of such legal articles as have a socio-economic interest. A bibliography of the principal German law books published during the year appears in the *Annual Bulletin* of the Comparative Law Bureau. A work which devotes itself especially to careful book reviews is the *Kritische vierteljahresschrift für gesetzgebung und rechtswissenschaft*, which superseded the *Kritische ueberschau der deutschen gesetzgebung* (Munich, 1853–1859), and which since 1859 has been

issued as an annual volume. It was originally edited by Profs. Arndts, Bluntschli and Pözl, and among its present editors are Profs. Birkmeyer and Ullmann of Munich. The publisher is Theodor Ackermann, Munich. The *Zeitschrift für die gesamte strafrechtswissenschaft* (Berlin, J. Guttentag) devotes one of its numbers each year to a critical survey of recent literature in various departments of law, especially emphasizing general jurisprudence, legal history, criminal law and procedure and law reform. It is a valuable source of information.

The appearance of the German Civil Code stimulated the publication of bibliographies especially devoted to the civil law. The most important of these is compiled by Dr. Georg Maas, formerly assistant librarian of the Supreme Court of Germany and now librarian of the Imperial Military Court at Berlin. His systematic subject bibliography of German civil law began issue in 1888, one volume covering the years 1888 to 1898, subsequent volumes being published annually from 1899 to 1903. The first volume (covering 1888 to 1898) also appears as volume 16 of the *Archiv für bürgerliches recht*, which periodical in its succeeding volumes contains the annual bibliographies of Dr. Maas. For the years 1905 and 1906 Dr. Maas published a *Jurisprudentia Germaniae*, which, under careful subject divisions, covers the entire literary producti n in German law during the year. Unfortunately, the life of this publication was limited to two years. It may be of advantage to mention the *Bibliotheca juridica*, which, in the form of a small booklet, is published each year by an association of German law book publishers; with very brief titles, it presents the principal legal works still in print, with the year of publication and the price, under subject division. Hinrichs in Leipzig publishes quarterly a pamphlet known as *Neue bücher über rechts- und staatswissenschaften*, which is a reprint from his *Vierteljahres-katalog der neuigkeiten des deutschen buchhandels*. The two leading law libraries in Germany have published cat-

alogues, the most recent being that of the *Reichsjustizamt* (Department of Justice) in Berlin, a third edition of which appeared in 1909. The *Reichsgericht* (Supreme Court) at Leipzig published a two volume catalogue (1882 and 1890), subsequent accessions appearing in the form of manuscript supplements.

LEGISLATION

The official legislation of modern Germany may be said to commence with the formation of the North-German Federation in 1867. During the four years following, up to the establishment of the Empire, there appeared annually the *Bundesgesetzblatt des norddeutschen bundes* published at Berlin. Since 1871, the official *Reichsgesetzblatt* has been published; it contains the laws passed by the Reichstag, and the *Verordnungen* (decrees) of the *Bundesrat* (Federal Council). It is issued in slip form promptly after the promulgation of a law or decree, and is bound in an annual volume. An index covering the legislation down to 1896 was published officially at Berlin in 1897. A private index to the statutes was published by Frederic Pfaff, covering the years 1867 to 1890; two thin volumes by Hans Becker bring the index down to 1907. They are published in Mainz by J. Diemer.

An important private collection of the legislation of Prussia and Germany is edited by C. A. Grotefend, Privy Councillor, in six volumes, including an index. This work covers the legislation from 1806 to 1899 inclusive, under the title *Preussisch-Deutsche gesetzsammlung*, 1806–1899. Since 1899 an annual volume has appeared under the title *Das gesammte deutsche und preussische gesetzgebungs-material.* This reprints the legislation of the Empire and of Prussia and all the decrees and ordinances published in the official *Ministerialblätter*, twelve in all. It may be called a yearbook of legislation. The internal arrangement of the material follows no definite order, but the work is supplied with an excellent systematic sum-

mary, by subject matter, together with a chronological table of the legislative activities of every governmental department. It is now edited by Dr. C. Cretschmar, District Attorney. The whole series is published by L. Schwann in Düsseldorf, 1900 to date. A useful reference work, which contains the principal laws of the Empire, is published by Bruer & Co. in Berlin, under the title *Deutsches reichsgesetzbuch für industrie, handel und gewerbe;* it is now in its forty-third edition, and consists of two very large volumes. A new edition appears about every two years.

Excellent annotated editions of the principal laws of the Empire are published by the firm of Guttentag in Berlin under the title *Guttentag'sche sammlung deutscher reichsgesetze.* New editions of the more important volumes appear frequently. The series now contains one hundred volumes. Another collection of the important laws, somewhat less useful than those mentioned above, is that edited by Hue de Grais, entitled *Handbuch der gesetzgebung von Preussen und dem deutschen reiche* (Berlin, Julius Springer, 1901–1906). This contains the legislation of the Empire and Prussia under broad subject divisions. It is to consist of forty volumes, of which twelve have so far been issued. A number of publishing firms in Germany, as, for example, Bensheimer, Göschen and Rossberg, publish small and very cheap annotated editions of the principal laws.

COURT REPORTS

The decisions of courts in Germany are not binding precedents, even on inferior courts. Judicial precedents in fact are not considered a source of law, altho they have evidenciary value. The persuasive force of decisions, however, is meeting with ever increasing recognition. This is attested by the growing number of court reports published and the frequency with which decided cases are cited. The decisions of every impor-

tant court are published regularly. A few sections in Gray's *Nature and sources of the law* (New York, Columbia University Press, 1909), pp. 193–198 are devoted to a discussion of the history and force of judicial precedents in Germany. The same work contains interesting discussions of the extent to which custom and the opinions of experts may be considered a source of law. In the course of an article entitled "Judicial precedents—a short study in comparative jurisprudence" (9 Harvard Law Review (1895), pp. 27–41) Prof. Gray had already shown his interest in this question of the force of judicial precedent in countries not subject to the common law.

The principal court decisions in Germany, are, of course, those of the *Reichsgericht*, the Supreme Court of the Empire. Before the Judiciary Act of 1877 (in effect Oct. 1, 1879) which established the present Supreme Court, the highest tribunal in Germany was called the *Reichsoberhandelsgericht*. It sat from 1871 until the end of 1879. Its jurisdiction was much more limited than that of the present court. Its decisions were published in a series edited by a committee of judges of the court, under the title *Entscheidungen des reichsoberhandelsgerichts* (25 volumes and 4 indexes, Stuttgart, F. Enke, 1873–1880). The decisions of the present Supreme Court as established by the Judiciary Act of January 27, 1877, are published in two series, civil cases and criminal cases,[1] edited by a mixed committee of members of the court and its bar. Both series began in 1880, two or three small volumes appearing annually. A systematic compilation of the important decisions of the Supreme Court in civil matters, *Die rechtsprechung des reichsgerichts*, by Hugo Neumann began to be published in 1910

[1] Entscheidungen des reichsgerichts in zivilsachen. Leipzig, Veit & Co., 1880–1911. 76 v. 5 indexes (to v. 70).

Entscheidungen des reichsgerichts in strafsachen. Leipzig, Veit & Co., 1880–1911. 45 v., index to v. 1–35 by D. Suppes, Leipzig, Veit, 1902.

(Berlin, Vahlen). The decisions of the Supreme Court in civil cases not reported in the official series, are published in an annual volume by Warneyer,[1] who undertakes regularly to compile the decisions handed down during the year on various branches of law.

Another court report of considerable importance, edited by Mugdan and Falkmann, began publication with the coming into force of the Civil Code in 1900 and reports the decisions of the Courts of Appeal of the Empire (*Oberlandesgerichte*)[2] in all matters of private law. Only public law and criminal matters are excluded. The decisions are divided by subject matter according to the various codes or statutes which they construe. The publication is now in its twenty-second volume, two volumes being published annually. Another report of established reputation in Germany began in 1847 and is known under the title *Seuffert's Archiv.*[3] It reports the decisions of the highest courts of the States of Germany, the decisions being divided according to subject matter. So far 66 volumes have appeared, and an index to the first 55. Decisions in administrative matters are collected in a set of reports called *Entscheidungen der gerichte und verwaltungsbehörden*, edited by A. Reger, and at present published at Munich by Beck. They include decisions in administrative, industrial, and criminal matters, as well as in matters of social insurance in all its branches. The publication began in 1881; up to the present, 30 volumes have appeared.

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[1] Warneyer's Jahrbuch der entscheidungen. Ergänzungsband enth. die rechtsprechung des reichsgerichts auf dem gebiete des zivilrechts, soweit sie nicht in der amtlichen sammlung . . . abgedruckt ist. Leipzig, Rossberg.

[2] Die Rechtsprechung der oberlandesgerichte, edited by B. Mugdan and R. Falkmann, (judges of the court of appeal in Prussia). Leipzig, Veit, 1900–1911. 22 v.

[3] J. U. Seuffert's Archiv für entscheidungen der obersten gerichte in den deutschen staaten hrsg. von A. F. Preusser. München, 1847 and cont.

Since 1900, there has been published a small annual volume of headnotes of the important decisions of the courts. This collection *Rechtsprechung zum gesamten zivil- handels- u. prozessrecht*, edited by Th. Soergel, is extremely popular among practitioners (Stuttgart, Deutsche Verlagsanstalt). The decisions of the highest court of Prussia are edited by Johow and Ring in an annual volume, *Jahrbuch für entscheidungen des kammergerichts* (Berlin, Vahlen, 1884 ff). Decisions covering more specific subjects will be mentioned under their respective heads in the course of this Guide.

LEGAL EDUCATION

The subject of legal education, including the prerequisites for the study of law, has always been a matter of great importance in Germany. In recent years it has become especially prominent because of the discussions as to the relative importance of theoretical study and practical experience, and as part of the general movement for law reform. A great part of the 1911 session at Würzburg of the German Bar Association *Deutscher Anwaltsverein*[1] was devoted to a discussion of the question "What reforms in the training of law students are to be recommended?" The results of the discussion are of international interest. The question of legal training for the German lawyer and judge was treated at length in the expert opinion of Dr. Boyens of Leipzig, who entered into an interesting comparison with the present state of legal education in England, drawing upon English and German literature in the course of his paper. This portion of

[1] Every two years, alternating with the Deutsche Juristentag (Conference of German Jurists), the German practising lawyers, united as the Deutsche Anwaltsverein (German Bar Association), meet to deliberate on important questions of law and legislation. The organ of the Jurists is the *Deutsche Juristentag;* that of the *Anwaltsverein* is the *Juristische Wochenschrift.*

the proceedings may be found in the supplement to the *Juristische wochenschrift*, No. 20, 1911. A brief report appeared in the Law Journal (London) of October 7, 1911, volume 46 (No. 2386), page 607.

Two contributions to the literature on legal education, published in 1909 and 1910 by Prof. Ernst Zitelmann [1] of Bonn and Prof. Erwin Grueber [2] of Munich respectively, are worthy of special mention. Both are entitled *Die vorbildung der juristen.* They represent opposing views. Dr. v. Göz, in a review of Grueber's booklet in a recent number of the *Archiv für öffentliches recht* (v. 28, heft 2–3, 1911, pp. 369–372), gives a brief account of the whole movement for the reform of legal education and other related matters. Dr. H. B. Gerland of Jena, who recently published two large volumes on English judicial organization and procedure, has also contributed a small volume to the much discussed question of the reform of legal education.[3] A synopsis of its contents by Prof. Beling, of Tübingen, may be found on page 773 of volume 31 (1911) of the *Zeitschrift für die gesamte strafrechtswissenschaft.*

A number of important contributions to the subject have been made in articles in English, to which it seems desirable to call attention. The preliminary training and social standing of the German lawyer of the first half of the nineteenth century are discussed in the course of an article in the Law Magazine, volume 13 (1835), pages 287–309, under the title "State of the bar in France, Germany, Spain and Italy." The modern German law student and his training are discussed by Prof. Ernst

[1] Zitelmann, Ernst. Die vorbildung der juristen. Leipzig, Duncker & Humblot, 1909. 45 p.

[2] Grueber, Erwin. Die vorbildung der juristen u. ihre reform. Leipzig, Sebald, 1910. 19 p.

[3] Gerland, Heinrich B. Die reform des juristischen studiums. Bonn, Marcus & Weber, 1911. 160 p.

Freund, now of the University of Chicago, in an interesting account in the Counsellor, volume 1 (Jan., 1892), pages 131–135. It is illustrated by the learned author's own experiences while obtaining the doctor's degree. Judge Karl v. Lewinski gave to American lawyers an excellent account of the preliminary education of the German lawyer, his course of study in the law school, and his practical work in the courts before his final admission to the bar. The article, originally an address before the American Bar Association (Proceedings, 1908, pp. 814–827), may be found in the Green Bag, volume 20 (1908), pages 516–523, and is reprinted in volume 31, New Jersey Law Journal (1908), pages 324–331. Prof. W. E. Walz in the Maine Law Review, volume 3 (Nov.–Dec., 1909), pages 1–6, 41–51, gives an able account of the practical features of legal education in Germany. The technical curriculum of the German law school is presented by Dr. Gustav Schirrmeister in the Law Magazine and Review, volume 29 (1904), pages 129–139. Prof. Munroe Smith's article in the Columbia University Quarterly (1902), pages 138–144 may also be consulted. In one section (pp. 153–156) of a recent article, "German courts at work," printed in the July, 1911, number of the Journal of the Society of Comparative Legislation, Julius Hirschfield gives a good, though summary account of the education of German lawyers, incidentally drawing comparisons with the English system of legal eduation. Seminary methods of legal education at the University of Berlin were discussed briefly by Prof. E. G. Lorenzen in an article in volume 1, pages 388–397, of the American Law School Review.

Attention must be called to a source of literature on legal education which is especially directed to an outline of a course of study and a program of the necessary law school literature. This is contained in that section of works on legal encyclopedia (*infra*) which is entitled "Methodology." Among the modern works Gareis' *Introduction to the science of law* (*infra*), pages

303–329, may be consulted with greatest advantage. Part 3 of Hastie's *Outlines of the science of jurisprudence*[1] consists of a translation from Dr. M. Falck's *Rechtsencyklopädie* (5th ed., edited by Jhering, 1851). It is entitled "The scientific study of jurisprudence, its preliminaries, special means and appliances." Part 4 is a translation from the appendix of Ahren's *Rechtsencyklopädie* (Wien, 1855). It is entitled "Principles of juristic methodology." For the history of legal education in Germany, these chapters from Hastie's work are of much interest.

JURISPRUDENCE

A.—LEGAL ENCYCLOPEDIA

Legal encylopedia, or juristic survey, is the term used by Germans to describe one particular class among those works which the Anglo-American lawyer knows under the title "General Jurisprudence." By legal encyclopedia they mean, to borrow Arndts's definition, "a scientific and systematic outline or general view of the whole province of jurisprudence, together with the data of that science; its purpose is to determine the compass and limits of jurisprudence, its relations to other sciences, its internal divisions, and the mutual relations of its constituent parts." It is a classification of the law into legal pigeonholes emphasizing their interrelation. It is the first step in the training of the German law student; with us, when not omitted entirely, it is the last. Prof. Munroe Smith's article in the Columbia University Quarterly (1902), pages 138–144 is of interest in this connection.

One of the most important of this class of works has recently been made available to us in an English translation by A. Kocourek. This is Gareis's *Introduction to the science of law*

[1] Hastie, W. Outlines of the science of jurisprudence. An introduction to the systematic study of law. Translated and edited from the juristic encyclopedias of Puchta, Friedländer, Falck and Ahrens. Edinburgh, T. & T. Clark, 1887. 282 p.

(*Encyklopädie und methodologie der rechtswissenschaft*).[1] It has been incorporated into the Modern Legal Philosophy Series as its first volume. The importance of the work to the American lawyer can not be overemphasized, and as an introduction to general jurisprudence and particularly to German law it is of much value. It is well translated. Two other works of this type must be noticed. One is by the well-known Adolph Merkel,[2] formerly professor at Strassburg (4th ed., 1909), and the other by Arndts,[3] the eleventh edition of which, edited by Erwin Grueber, appeared in 1908.

The more recent works on legal encyclopedia, while in part preserving the abstract philosophical background, nevertheless bring themselves into close relation with the provisions of the German Civil Code and modern law in general. This was less true of the earlier works on the subject. They retained their philosophic atmosphere throughout, and except for such portions as dealt with the topics for legal study or methodology indulged in not a little speculation. This is true of Puchta's (1798–1846) *Outlines of jurisprudence as the science of right*, which was translated into English by W. Hastie in his *Outlines of the science of jurisprudence.*[4] Puchta found

[1] Gareis, Karl. Introduction to the science of law . . . tr. from the 3d rev. ed. of the German by Albert Kocourek . . . with an introduction by Roscoe Pound. . . . Boston, The Boston Book Co., 1911. 375 p.

Gareis, Karl. Encyklopädie und methodologie der rechtswissenschaft (Einleitung in die rechtswissenschaft). 3. neu durchgearbeitete aufl. Giessen, E. Roth, 1905. 228 p.

On the subject of Gareis' *Science of law*, see an article by Arthur W. Spencer, in the April, 1911, Green Bag, 191–196.

[2] Merkel, Adolf. Juristische encyklopädie. 4. neu durchgesehene aufl. Hrsg. von Dr. Rudolf Merkel. . . . Berlin, J. Guttentag, 1909. 385 p.

[3] Arndts, R. von Arnesberg. Juristische encyklopädie und methologie. 11th ed. by E. Grueber. Stuttgart & Berlin, J. G. Cotta, 1908. 102 p.

[4] Hastie, W. Outlines of the science of jurisprudence. An introduction to the systematic study of law. Translated and edited from the Juristic Encyclopedias of Puchta, Friedländer, Falck and Ahrens. Edinburgh, T. & T. Clark, 1887. 282 p.

his philosophical elements in the speculation of Schelling; in legal method and thought, he is prominently identified with the historical school of Savigny. A brief extract from Friedländer's *System of jurisprudence* constitutes part 2 of Hastie's translation. Friedländer, when he published his *Juristic encyclopedia*, in 1847, was a lecturer at the University of Heidelberg. In philosophy, he was a Neo-Hegelian. Part 5 of Hastie's book is likewise a translation from Friedländer's *Juristic encyclopedia* and is of historical importance, in that it is concerned with the history of legal encyclopedia as the systematic science of jurisprudence. The introduction (pp. 9–22) of Korkunov's *General theory of law* (Hasting's translation) contains an interesting account of the nature, history and literature of legal encyclopedia.

A work of much value as a philosophical introduction to the study of law is the celebrated Prof. Kohler's *Einführung in die rechtswissenschaft.*[1] An article under the same title by Prof. Grueber of Munich appears as the first contribution in Birkmeyer's *Encyklopädie der rechtswissenschaft* (*infra*). The same author in 1908 published an independent work on the subject, largely a reprint of his article.[2] Dr. Spiegel's *Beiträge zur kritik und methodik der rechtswissenschaft*[3] also merits our attention.

The term *Encyklopädie der Rechtswissenschaft* has been used to describe a type of work which has grown out of the more general use of that term. While still retaining its character as a survey of the whole field of law, Holtzdendorff's

[1] Kohler, Josef. Einführung in die rechtswissenschaft. 3. ed. Leipzig, A. Deichert, 1908. 312 p.

[2] Grueber, Erwin. Einführung in die rechtswissenschaft. Berlin, O. Häring, 1908. 174 p.

[3] Spiegel, Ludwig. Beiträge zur kritik u. methodik der rechtswissenschaft. Leipzig, Duncker & Humblot, 1909. 222 p.

Encyklopädie der rechtswissenschaft[1] consists of some twenty independent articles, by leading authorities in Germany, covering the different branches of law. They are divided into four broad divisions: (1) philosophy of law; (2) civil law, including commercial law and procedure; (3) criminal law; (4) public law. The sixth edition of this well-known work, edited by Prof. Kohler, was published in 1904. The fifth edition, published in 1890, contains articles by contributors in part other than those found in the sixth edition, and has therefore some independent value. Another notable work of the type of Holtzdendorff is that edited by Dr. Karl Birkmeyer of Munich,[2] the leader of the classical school in criminal law. It consists of fourteen articles by leading authorities on different branches of law.

An important collection of monographs by the leading publicists of Germany appears as one of the volumes in the *Kultur der gegenwart* under the title *Systematische rechtswissenschaft.*[3] The second part of Holtzendorff's *Encyklopädie* was formerly called *Rechtslexikon*, and presented in alphabetical arrangement a synopsis of German law. For this purpose it is now largely antiquated, but its bibliographies are still useful. The last edition appeared in 1875.

B.—PHILOSOPHY OF LAW

Works on the philosophy of law (*Rechtsphilosophie*) take up the philosophical foundations of the legal order, legal systems, institutions and doctrines, and the philosophical and ethical

[1] Holtzendorff, Franz von. Encyklopädie der rechtswissenschaft. 6th ed. by Josef Kohler. Berlin, Duncker & Humblot, 1904. 2 v. See the extensive article by Prof. Erwin Grueber (Law Quarterly Review, vol. 1, 1885, pp. 62–79) in which the contents of the fourth edition of this work are discussed.

[2] Birkmeyer, Karl. Encyklopädie der rechtswissenschaft. Berlin, O. Häring, 1904. 1516 p.

[3] Systematische rechtswissenschaft von Stammler, Sohm, Gareis, Ehrenberg, Bar, Seuffert, Liszt, Laband, Anschütz. Part of Die Kultur der gegenwart, Edited by P. Hinneberg. Part II, Section VIII. Leipzig, Teubner, 1906.

bases of particular branches of the law. Works on the general theory of law (*Allgemeine Rechtslehre*) treat of general conceptions of law or of a legal system. The division between the works on *Rechtsphilosophie* and *Rechtslehre* is often vague.

A class of work which also presents a scientific analysis of fundamental legal conceptions is the Introductory or General Part of works on *Pandektenrecht* or modern Roman law. These works take up the details of a complete legal system and will be discussed later.

Jurists have been arranged in schools or groups according to their methods, or according to their fundamental conceptions of law, in its origin, nature or purpose. Classifications, however, are by no means rigid, and the lines between the schools are often very indistinct.

Jurists, moreover, are frequently identified with certain leaders in juristic thought whose doctrines they tend to follow or approach. The theories of these early leaders have now been largely abandoned, but to adopt Sheldon Amos' characterization, they have "stamped their personality, their nomenclature, their ethical tone, and their methods of philosophical analysis so ineffaceably upon the science of jurisprudence", that a survey of German legal philosophy can not omit these master works.

Method is an essential characteristic of every science. Methods applied to legal science have gained recognition as they have proved of practical utility in producing a symmetrical system of law suitable to the needs of the people whose social relations it has to regulate. The four methods principally employed in legal science have been the metaphysical, or *a priori*, the historical, the analytical, and the comparative, each of which has had illustrious representatives.

The metaphysical method, adopted by what was probably the largest class of the philosophical jurists, investigates the abstract ideas of right and law in their relation to morality,

freedom, and the human will. Law becomes the expression of an idea. In the hands of certain of its exponents, this method gave new life to the school of natural law which regarded divine law as superior to human law, the law of man being simply a part of a larger scheme of the universe. In the hands of others, it helped to supplant the law-of-nature school.

The reaction against this latter school by the historical school helped to produce a new theory of law. The historical jurist sees in law a product of time and unconscious evolution; a rule of human action becomes the result of human experience. The reaction against the divine authority of law in favor of a constituted authority produced what has been called the positive school of thought, represented by Hobbes in England in political philosophy, and by Thibaut in Germany as a practical dogmatist in law. The opposition in England of the historical to the positive school finds a counterpart in Germany in the controversy between Savigny and Thibaut, to which conflict we shall recur later.

The analytical method starts from the concrete, from actually existing legal data, defines the terms, classifies them, and explains their connotation and interrelation. The analytical school, essentially of English origin, first became important in Germany with Binding's *Die Normen und ihre übertretung* (1872).[1] It considers law as the product of a conscious or determinate human will. The modern development of this method and its application to current social problems is identified with the name of Jhering. Jhering represents a reaction against the historical school of Savigny. While continuing to regard law as a historical phenomenon, Jhering denies that it is an unconscious growth; on the contrary, he asserts that it is and always has been *made*, and that means of serving human ends are discovered and fashioned consciously into laws. He

[1] Binding, Karl. Die normen und ihre übertretung. Leipzig, Engelmann, 1872–77. 2 v. v. 1, 2nd ed., 1890.

agrees with the English analytic school in emphasizing the possibility of enforcement as an essential characteristic of law.

The comparative method is concerned with space, as the historical is with time. It collects and examines the doctrines, rules, and notions which are found in every developed legal system, notes their agreements and differences, and thereby seeks to construct a system of law. While this method has produced no distinct theory of law, it has come into prominence through the works of Dahn, Post, and Kohler, in which comparative ethnology and anthropology are considered as important bases of jurisprudence.

The leading representative of the metaphysical group was the great philosopher Kant (1724–1804). With Kant, jurisprudence for the first time fell into the hands of the metaphysicians, and this union of law and metaphysics characterized a considerable portion of the German legal philosophy of the early nineteenth century. Kant's philosophy of law is contained in his work *Die metaphysik der sitten*,[1] published in 1797 as the first part of his *Metaphysic of morals*, the sequel and completion of his *Foundation for a metaphysic of morals*.[2] We possess an English translation of the work by W. Hastie.[3]

The important legal philosophers of the early nineteenth century who have themselves become leaders of juristic thought—Fichte, Schelling, Hegel, Krause—made the Kantian philosophy the starting point of their individual efforts.

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[1] Kant, I. Die metaphysik der sitten. Erster teil. Metaphysische anfangsgründe der rechtslehre. Königsberg, 1797.

[2] Kant, I. Grundlegung zur metaphysik der sitten. Translated by Willich (1798), Semple (1836) and Abbott (1873).

[3] Hastie, W. Kant's philosophy of law. An exposition of the fundamental principles of jurisprudence as the science of right, by Immanuel Kant. Translated from the German by W. Hastie. Edinburgh, T. & T. Clark, 1887. 265 p.

Fichte's (1762–1814) most prominent work is his *Grundlage des naturrechts*.[1] The work was translated into English in 1869.[2] Schelling (1775–1854) is perhaps best known through his disciple Stahl (1802–1861), generally considered the leading representative of the theological school in legal philosophy.[3]

Hegel's (1770–1831) great work is his *Grundlinien der philosophie des rechts*, which has been translated into English by Prof. Dyde.[4] The work first appeared in 1821, and in 1833 was edited by Gans (2d ed., 1840). In 1902 an edition by Bolland was published in Leyden. The well-known editor of the *Encyklopädie u. der phänomenologie*, George Lasson, has recently brought out a new edition,[5] in which he has carefully edited the text and supplied a valuable introduction and copious notes. Prof. Kohler, the most prominent Neo-Hegelian, took occasion, on the appearance of this work, to write an article on Hegel's legal philosophy. It may be found in the October, 1911, number of the *Archiv für rechts- und wirtschaftsphilosophie*, pages 104–114. The Hegelian philosophy considers law the expression of the culture of a people in the form of principles for the government of men's external relations to one another. To quote Korkunov, Hegel's disciples have sought to present the development of different systems of positive law as a dialectic development of the general idea

[1] Fichte, J. G. Grundlage des naturrechts nach principien der wissenschaftslehre. Jena und Leipzig, C. E. Gabler, 1796–97, 2nd ed. 2 v. in 1.

[2] Fichte, J. C. The science of rights. Translated from the German by A. E. Kroeger. Philadelphia, Lippincott, 1869. 505 p.

[3] Stahl, F. J. Die philosophie des rechts. 3 v. 4th ed. Heidelberg, 1870, v. 1 (History) translated into French by Chauffard (Paris, 1870).

[4] Hegel, G. W. F. Philosophie des rechts. Translated by Professor Dyde as "Philosophy of right." London, Bell, 1896.

[5] Hegel, G. W. F. Grundlinien der philosophie des rechts. Mit der von Gans redigierten zusätzen aus Hegel's vorlesungen neu hrsg. von Georg Lasson. Leipzig, F. Meiner, 1911. 380 p.

of liberty. An outline in English of Hegel's legal philosophy is given in Dr. James Hutchison Stirling's *Lectures on the philosophy of law.*[1] The lectures of W. G. Miller delivered at the University of Glasgow, adopt in general the Hegelian standpoint.[2]

Krause (1781–1832) is now recognized as the definite founder of the organic and positive school of natural law, and brings to its fullest effect the philosophy of Kant. His two most prominent works are his *Grundlage des naturrechts,*[3] and his *Abriss des systems der rechtsphilosophie.*[4] The leading representative of the Krause school was the celebrated Ahrens (1808–1874), whose *Cours de droit naturel* [5] has an international reputation. The only English work which displays sympathy for the principles of Krause and his school of natural right is Prof. Lorimer's *Institutes of law.*[6] Pollock in his *Essays in jurisprudence and ethics*, page 19 et seq., gives considerable space to Lorimer's work and the theory.

The various schools of juristic thought have been in frequent opposition, and the history of legal development in Germany is closely identified with their controversies. The nineteenth century opened with the reaction by the historical school, resurrected and rehabilitated by Hugo (1764–1844), against the school of natural law. The first effective challenge of this revived school was extended by Savigny, its most illustrious

[1] Stirling, James Hutchison. Lectures on the philosophy of law. London, 1873. 139 p.

[2] Miller, W. G. Lectures on the philosophy of law. London, C. Griffin, 1884. 432 p.

[3] Krause, C. Chr. Grundlage des naturrechts oder philosophischer grundriss des ideals des rechts. v. 1, 1803.

[4] Krause, C. Chr. Abriss des systems der rechtsphilosophie oder des naturrechts, 1825. (System der rechtsphilosophie, Leipzig, 1873.)

[5] Ahrens, Heinrich. Cours de droit naturel ou de philosophie du droit. 8th ed. Leipzig, Brockhaus, 1892, 2 v. 6th (German) ed. Vienna, 1870. English translation, Boston, 1880 (Miller's bibliography).

[6] Lorimer, J. Institutes of law. A treatise of the principles of jurisprudence as determined by nature. 2d ed. Edinburgh, 1880.

representative, in his intellectual contest with the practical dogmatic school of Thibaut. Savigny also opposed his historical method to the abstract metaphysical speculations of the contemporary Hegelians. After the controversies of Thibaut and Savigny on the possibility and utility of codification had been forgotten in the great constructive work of codification and law reform which began with the Bills of Exchange Act (*Wechselordnung*) of 1849, and which was continued in the Commercial Code of 1861 and later in the Imperial statutes of 1877, the arena was cleared for the struggle between the Germanists and the Romanists. While not strictly a conflict between philosophical conceptions of jurisprudence, the contest may nevertheless be considered an effort of the then newly arising analytical school, by its critical methods, to overthrow the dominant Romanism in German law. These controversies having now largely subsided with the enactment of the Civil Code, the social conditions of the present day have given rise to a new school which Roscoe Pound calls a socio-philosophical or sociological school. This sociological school of juristic thought combines within it the methods of the historical, analytical, and revived philosophical schools.

The substance of the struggle between the historical and dogmatic non-historical schools, whose champions at the height of the controversy were Savigny and Thibaut, is exemplified by two small works, the one by Savigny (1779–1860), his celebrated *Of the vocation of our age for legislation and jurisprudence*, first written in 1814 (English translation by Abraham Hayward from the second, 1828, edition, London, Littlewood, 1831), and the other by Thibaut, a pamphlet called *Über die notwendigkeit eines allgemeinen bürgerlichen rechts für Deutschland*, published in 1814 with some other doctrinary monographs. Both works were due to a revival of German patriotism, caused by the Napoleonic wars. Thibaut urged his countrymen to promote German unity by codifying and

unifying their laws. Savigny warned them against hastily and inconsiderately following French models. A short critique of the German historical school is presented in Korkunov's *General theory of law* (Hasting's translation), pages 118–122. In section 19, pages 143–156 of that book the doctrines of Hugo, Savigny and Puchta, the most typical representatives of the historical school, are set forth. The political and legal conditions upon which Thibaut based his advocacy of codification are also well stated. A list of the works of Hugo, the father of the historical school, are to be found in the American Jurist, volume 14 (1835), page 48, and those of his great disciple, Haubold, in the footnote on page 49 of the same volume. A valuable study of the life and influence of Savigny was written for the Journal of the Society of Comparative Legislation, vol. 11 (November, 1910), pages 32–54, by J. E. G. DeMontmorency, this being one of a series entitled "The great jurists of the world." Dr. W. Guthrie's excellent translation of the eighth volume of Savigny's *System des heutigen römischen rechts*[1] is introduced by an admirable account of Savigny and his standpoint. This introduction also contains (p. 13) in Savigny's own words, a refutation of the charge made against the historical school, that its disciples sought to impose Roman law upon modern conditions in Germany.

In the latter part of the nineteenth century strict philosophy of law fell into disrepute because of its mistaken identification with the metaphysical speculations of Kant and Hegel. Nevertheless such works as Lasson's *System der rechtsphilosophie* (Berlin, 1882), and the works of Kohler indicate a distinct revival of the Hegelian school. Stammler, the most prominent Neo-Kantian of modern times, also shows the influence of the

[1] Savigny, F. Carl von. A treatise on the conflict of laws. Translated, with notes, by William Guthrie, 2d ed. Edinburgh, T. & T. Clark, 1880. 567 p.

general philosophical awakening at the end of the nineteenth century. Jhering, Kohler and Stammler are the leaders of the modern sociological-philosophical school.

The differences between the various schools have called forth a number of excellent articles in English and American periodicals to which it seems fitting to direct attention. By all means the most important of these are the two articles published by Roscoe Pound on the "scope and purpose of sociological jurisprudence," which appeared in the June and December, 1911, numbers of the Harvard Law Review (Vol. 24, pp. 591–619; vol. 25, pp. 140–168). It is a brilliant account of the origin, principles, development, and interrelation of the various schools of juristic thought. The second of the articles devotes considerable space to the doctrines and influence of the greatest of the social utilitarians, Jhering, and the leader of the modern Neo-Kantians, Stammler, to whose notable work we shall refer below. Prof. Pound's forthcoming book *Sociological jurisprudence*, of which these articles are the substance, will unquestionably command widespread attention.

The different schools of jurisprudence, with emphasis on the sociological, were described by Prof. Pound in his paper "A new school of jurists," published in the University Studies of the University of Nebraska, Lincoln, Nebr. (Vol. 4, July, 1904, pp. 249–266). Gareis's *Science of law*, Introduction, page 12, presents a succinct outline of the various schools. The twelfth essay in Bryce's *Studies in history and jurisprudence* (Oxford, 1901), volume 2, pages 172–208, while not confined to Germany, discusses the principal methods of legal science, their application to the philosophy of law, and their theoretical and practical utility. The concluding pages of Munroe Smith's brilliant essay on *Jurisprudence*[1] take up

[1] Smith, Munroe. Jurisprudence. New York, Columbia University Press, 1908. 42 p.

the principal schools of juristic thought, their theories, and their methods.

An article by Prof. Pound published in volume 1 of the *Annual Bulletin* of the Comparative Law Bureau presents the attitude of the three principal schools, the analytic, the historical, and the modern sociological-philosophical school toward a certain phase of the contemporary movement for the reform of legal procedure in Germany—the function of the judge in the application of law (*Rechtsanwendung*). Dr. M. Rumpf in a small work entitled *Gesetz und richter* [1] has made a valuable contribution to this much debated question of the proper function of the judge in applying the law, and the relation between legislation and judicial decision. The work has recently been translated into French. A book on the same subject by Brütt [2] has attracted some attention.

In an article entitled "German historical school of jurisprudence," published in the American Jurist, volume 14 (1835), pages 43–62, there appears a translation of the seventeenth chapter of Lerminier's great work *Introduction générale à l' histoire du droit* (2d ed., Paris, 1835). The article contains a learned discussion of the conflicting theories of Savigny and Thibaut, as portrayed in their works. In a similar article comparative of these two schools, under the title "Schools of German jurists" (Monthly Law Magazine, vol. 6, 1839, pp. 77–98), the two great schools of Roman lawyers and their principal disciples are discussed, followed by a comparison of the respective schools of Savigny and Thibaut. A. H. Lefroy, in an article entitled "Jurisprudence," which appeared in the Law Quarterly Review, 1911, pages 180–186 distinguishes the English from the German historical school of jurisprudence, explaining that the former is scientific in origin and deals with

[1] Rumpf, M. Gesetz u. richter. Berlin, Liebmann, 1906. 199 p.

[2] Brütt, L. Die kunst der rechtsanwendung. Berlin, J. Guttentag, 1907. 214 p.

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the growth of juridical ideas within the legal system, whereas the latter is political in origin and deals with the development of legal systems as a whole. His opinions are based on Pollock, Vinogradoff, and Maine. In an article by Prof. Ernst Freund, published in the Political Science Quarterly, volume 5 (1890), pages 468–486 under the title "Historical jurisprudence in Germany" there is a critical discussion of the spirit and work of the historical school of jurists in their struggle with the philosophical and the practical dogmatic schools. Prof. Rudolf Leonhard, Kaiser Wilhelm exchange professor at Columbia University, 1907–8, in an introductory address on the "Methods followed in Germany by the historical school of law" (published in the Columbia Law Review, vol. 7, 1907, pp. 573-581) examines with friendly criticism the methods of the historical school and lays emphasis on its achievements.

A useful bibliography of the philosophy of law, divided by schools and periods, is printed as Appendix E (pp. 408–424) of W. G. Miller's *Lectures on the philosophy of law* (London, Griffin, 1884). Prof. Salmond's well-known work on *Jurisprudence* (London, Stevens & Haynes, 1907, 2d ed.) contains, in Appendix V, a carefully selected bibliography.

The social conditions at the end of the nineteenth century and the demands of society for the effective administration of justice in the existing complex industrial organization helped to create a new group of jurists, the social utilitarians, who gave a new direction to philosophy of law, turning from its nature to its purpose. Rudolf Jhering (1818–1892), the great Romanist, is the leader of this group, of which Berolzheimer and Sternberg are prominent representatives. Jhering's views have exercised a permanent influence on the whole trend of modern juristic thought and conceptions of law, and jurists generally will agree with Roscoe Pound that his work is quite as epoch-making as that of Savigny. Jhering, analytically inclined,

represents a violent reaction against the historical school. Instead of considering law the result of unconscious growth, like language, Jhering by his teleological method succeeded in showing that it is fashioned to meet human ends consciously. His is a jurisprudence in which legal precepts are created and tested by their results and practical application. Jhering was the pioneer in doing for Germany what is now most urgently needed in America: he substituted a jurisprudence of results (*Wirklichkeitsjurisprudenz*) for a jurisprudence of conceptions (*Begriffsjurisprudenz*). He was the first to advance what is now the generally accepted theory that law is the means by which society recognizes and protects individual interests. It is not invoked by the individual against society, but is created by society to secure those individual interests which it recognizes. This social theory of law, and its practical effect in the interpretation of modern legislation has just begun its development. A discussion of the relation between the utilitarian school and those it has superseded may be found in Korkunov's *General theory of law*, pp. 104–115.

Prof. Munroe Smith in a series of articles appearing in the Political Science Quarterly,[1] under the title "Four German jurists," Bruns, Windscheid, von Jhering, and Gneist, undertakes a critical study of the works and philosophy of these scholars and of their influence on the development of law. A list of their principal publications appears in volume 10 (1895) of the Quarterly, pages 664–665. Two other important articles in English on the teachings of Jhering have appeared in periodicals. Prof. William Markby, in the Law Magazine and Review, fourth series, volume 3 (1878), pages 389–412, under the title "German jurists and Roman law," discussed Jhering's legal theories, particularly as he expounds them in his *Geist des römischen rechts* (Leipzig, 1873, 6th ed.,

[1] Political Science Quarterly. v. 10 (1895), pp. 664–692; v. 11 (1896), pp. 278–309; v. 12 (1897), pp. 21–62; v. 16 (1901), pp. 641–679.

1881–1907, 3 volumes). In the same article he discussed to some extent Jhering's forceful little work, *Der kampf ums recht* (17th ed., Wien, Manz, 1910), which has been translated into almost every modern language and appears in a rather poor English translation, from the fifth German edition, by John J. Lalor (Chicago, Callaghan & Co., 1879). This last-mentioned work is also discussed in an article by Judge U. M. Rose, published in the Southern Law Review, new series, volume 2 (1876), pages 551-575, under the title "Controversies of modern continental jurists." The article contains an exposition of the general legal philosophy and doctrines of Jhering.

Jhering's leading work, with which his juristic thought is usually identified, is his *Der zweck im recht* (Teleology of law).[1] This work is shortly to be translated under the title *Law as a means to an end* by Isaac Husik, of the University of Pennsylvania, as one of the Modern Legal Philosophy Series under the general editorship of a committee of the Association of American Law Schools. The theories presented in this work constitute the basis for the discussion of Jhering in Pound's recent article and occupy a prominent place in Munroe Smith's article on "Four German jurists" (*supra*). Chapter XII (pp. 262–310) of Lightwood's *Nature of positive law* (London, Macmillan, 1883) is entitled "Modern German schools of jurisprudence." It consists largely of a portrayal of Jhering's conceptions of law as opposed to those of Savigny and Puchta.

Berolzheimer, while a Neo-Hegelian, may be identified with the juristic conceptions of Jhering. His most prominent contributions to literature are his five volumes on legal and social philosophy.[2] Part of this work, *Die kulturstufe der*

[1] Jhering, Rudolf. Der zweck in recht. (1st ed. 1877–1883). 4th ed. Leipzig, Breitkopf & Härtel, 1904–1905. 2 v.

[2] Berolzheimer, Fritz. System der rechts u. wirtschaftsphilosophie. München, C. H. Beck, 1904–1907. 5 v.

rechts u. wirtschaftsphilosophie, is to be translated by Mrs. Joseph Jastrow as Volume II of the Modern Legal Philosophy Series. This is to offer a comprehensive survey of the works of all the philosophers, from the beginning to the present time, in their treatment of legal theory. Berolzheimer's *Rechtsphilosophische studien* [1] assured him a prominent place among present day scholars.

Jhering has exercised a strong influence on writers on the general theory of law, particularly as to the essential character of enforcement. Theodor Sternberg's *Allgemeine rechtslehre* [2] is among the more important of the recent works on jurisprudence. Although a Russian work, we can not overlook Korkunov's *General theory of law*,[3] which has been made available to Anglo-American lawyers by the excellent translation of Prof. Hastings. In its thorough grasp of legal concepts and its critical acumen, it is of primary importance in the study of German juristic thought. The work has been incorporated in the Modern Legal Philosophy Series, as Volume IV.

Attention may be called to a recent work on the general theory of law by August Sturm. He calls it the "psychological basis of law."[4] Its value is still uncertain.

The practical need for a new philosophical jurisprudence brought to the front a jurist whose work has made him prominent among modern scholars. This is Prof. Rudolf Stammler, of Halle, a Neo-Kantian. He represents a reaction against the historical school in his return to the philosophical

[1] Berolzheimer, Fritz. Rechtsphilosophische studien. München, C. H. Beck, 1903. 167 p.

[2] Sternberg, Theodor. Allgemeine rechtslehre. Leipzig, Göschen, 1904. 2 v.

[3] Korkunov, N. M. General theory of law. English translation by W. G. Hastings. Boston, Boston Book Co., 1909. 524 p.

[4] Sturm, August. Die psychologische grundlage des rechts. Ein beitrag zur allgemeinen rechtslehre. Hannover, Helwing, 1910. 531 p.

method. His theory of the social in place of the old individualistic ideal as a criterion of justice is in reality a legal theory of social justice which meets the social problems of the century and interprets the social will. To quote Prof. Pound, the whole science of jurisprudence has received a new standpoint. Kantorovicz, cited by Pound, states that it is Stammler's endeavor to find a method of "determining and directing the application of legal rules so that they shall have the quality of being objectively just." He reaches justice "through law" instead of "according to law."

All three of Stammler's leading works are of the utmost importance. For his philosophy of law his *Lehre von dem richtigen rechte*[1] is the most prominent. Under the title *The theory of justice* this work is to be translated into English in the Modern Legal Philosophy Series. His work *Wirtschaft und recht*[2] is likewise an attempt to reach a theory of law and justice which shall fit current social problems. Stammler's latest work *Theorie der rechtswissenschaft*[3] includes a complete system of his theory of jurisprudence. He deals with the concept, the validity, the categories, the method, the ideal, the technique, the practice and finally with the history of law. The book has appeared too recently to receive the discriminating evaluation that it deserves.

The Neo-Hegelians, whose most prominent disciple is their leader Josef Kohler, have preserved and developed the historical method. They have sought to relate this method to the philosophy of law, to anthropology, to ethnology, and to economics. Kohler's most important contribution to the philosophy of law is his theory of the sociological interpreta-

[1] Stammler, Rudolf. Die lehre von dem richtigen rechte. Berlin, Guttentag, 1902–1907. 2 v.

[2] Stammler, R. Wirtschaft u. recht. 2d ed. Leipzig, Veit & Co., 1906. 702 p.

[3] Stammler, R. Theorie der rechtswissenschaft. Halle, Waisenhaus, 1911. 852 p.

tion and application of law. Contrary to Savigny's theory that law is an unconscious growth, Kohler holds that law is a product of the culture of a people in the past, and of the attempt to adjust it to the culture of the present, in which a conscious effort may be prominent. Scholars generally admit that Kohler is the most versatile if not the greatest of living jurists. Kohler's leading work in this branch of law is his *Lehrbuch der rechtsphilosophie.*[1] Under the title *The philosophy of law,* this book is being translated into English by Adalbert Albrecht, as one of the Modern Legal Philosophy Series. It is expected to appear very shortly. "The mission and objects of philosophy of law" is the title of an article by Prof. Kohler which appeared in the Illinois Law Review, volume 5, February, 1911, pages 423–430. It is a translation by Albert Kocourek, of Chicago, of an article which was first published in the *Archiv für rechts- und wirtschaftsphilosophie.* It is a concise statement of Kohler's philosophy. The translator's final note on the state of philosophy of law in America is trenchant.

The object of Rudolf Bierling's *Juristische prinzipienlehre,*[2] a work begun almost twenty years ago and just completed, is to consider abstractly and present systematically the concepts and principles underlying positive law. The author considers law as having a formal nature, and thus differs essentially both from the old law-of-nature school and from the modern legal philosophy. An extensive review of the first volume by the late Prof. E. Hölder of Leipzig is found in the *Kritische vierteljahresschrift für gesetzgebung,* third series, volume 1 (vol. 37 of whole series), 1895, pages 1–52. Besides reviewing volume 1, he discusses the basic principles of the whole work and Bierling's legal philosophy.

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[1] Kohler, Josef. Lehrbuch der rechtsphilosophie. Berlin and Leipzig, W. Rothschild, 1900. 219 p.

[2] Bierling, Rudolf. Juristische prinzipienlehre. Leipzig, Mohr, 1894, 1898, 1905, 1911. 4 v.

A recent work by the octogenarian, Prof. Ernst Immanuel Bekker, entitled *Grundbegriffe des rechts und missgriffe der gesetzgebung*[1] deserves attention among works on this subject. It is a philosophic study of the basic principles of law from the point of view of the association or group as a subject of legal rights. A second volume is to contain a further discussion of the misconceptions and errors of legislation.

A periodical, edited by Profs. Kohler and Berolzheimer, dealing largely with the subject of legal philosophy, is the *Archiv für rechts- und wirtschaftsphilosophie*, which also discusses questions of legislation. It is now in its fourth year (Publishers, W. Rothschild, Berlin).

Reference has been made on several occasions to the translations of German works that are to appear in the Modern Legal Philosophy Series, edited by a committee of the Association of American Law Schools.[2] The series is also to include translations of important works on the philosophy of law pre-

[1] Bekker, E. I. Grundbegriffe des rechts und missgriffe der gesetzgebung. Berlin, Rothschild, 1910.

[2] The Modern Legal Philosophy Series is to consist of the following volumes.—Volumes I and IV have already been published, and others will appear shortly:

I. The science of law. By Karl Gareis of Univ. of Munich. Translated by Albert Kocourek of Northwestern Univ. Now ready. $3.50.

II. The world's legal philosophies. By Fritz Berolzheimer of Berlin. Translated by Mrs. Joseph Jastrow of Madison, Wis. Now ready. $4.25.

III. Comparative legal philosophy, in its application to legal institutions. By Luigi Miraglia of the Univ. of Naples. Translated by John Lisle of the Philadelphia bar. In press. $4.75.

IV. General theory of law. By N. M. Korkunov of the Univ. of St. Petersburg. Translated by W. G. Hastings of the Univ. of Nebraska. Now ready. $3.50.

V. Law as a means to an end. By Rudolf von Ihering of the Univ. of Berlin. Translated by Isaac Husik of the Univ. of Pennsylvania. Ready 1912. $3.50.

VI. The positive philosophy of law. By I. Vanni of the Univ. of Bologna. Translated by John Lisle of the Philadelphia bar. Ready 1913. $3.50.

senting the juristic thought of the most prominent Continental legal philosophers. The value of this work to the American lawyer can not be overestimated. The profession will recall the *Essays in Anglo-American legal history*, edited under the auspices of this same Association. They are adding to their monumental labors by undertaking the publication of translations of the most important Continental works on legal history. For these meritorious enterprises, American legal scholarship owes to these committees, and especially to Prof. Wigmore, one of their most active and inspiring members, a profound and lasting debt of gratitude.

LEGAL HISTORY

German legal scholars make a distinction between the history of legal science or the history of legal theories, and the history of law or the history of legal institutions. Probably the greatest work on the history of German legal science, the history of legal theories, is that by Prof. R. von Stintzing,

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VII. Modern French legal philosophy. By A. Fouillée, J. Charmont, L. Duguit and R. Demogue of the Universities of Paris, Montpellier, Bordeaux, and Lille. Translated by John Simpson of the New York bar. Ready 1913. $3.75.

VIII. The theory of justice. By Rudolf Stammler of the Univ. of Halle. $4.50.

IX. Select essays in modern legal philosophy. By various authors. $4.50.

X. The formal basis of law. By G. Del Vecchio of the Univ. of Bologna. Translated by John Lisle of the Philadelphia bar. Ready 1913. $4.50.

XI. The scientific basis of legal justice. $4.75.

XII. The philosophy of law. By Joseph Kohler of the Univ. of Berlin. Translated by Adalbert Albrecht of South Easton, Mass. Ready 1911. $3.50.

XIII. Philosophy in the development of law. By P. De Tourtoulon of the Univ. of Lausanne. $4.75.

The editorial committee consists of Profs. Wigmore, Lorenzen, Pound, Freund, Huberich, and Kocourek. The Boston Book Co. are the publishers.

entitled *Geschichte der deutschen rechtswissenschaft.*[1] The author was able to finish only two volumes of this masterpiece, when death cut short his scholarly activities. The work has recently been brought to a close by the publication of the fourth volume by Dr. Ernst Landsberg, who had previously published the third volume. The original author carried the work to 1700. The entire natural law school of Grotius and the authors who died after 1700 are treated of by Dr. Landsberg. The third volume, which reaches the beginning of the nineteenth century, brings the civil law up to the threshold of the historical school, criminal law to the beginning of the speculative-philosophical school, and public law to the end of the old German Empire. The volume which has just been published brings the subject matter down to the new Civil Code and the present century.

A brief account of the development of law in Germany from the *Leges barbarorum* to the present Civil Code is contained in Sir Courtenay Ilbert's *Legislative methods and forms* (Oxford, Clarendon Press, 1900), pages 15–19. The introductions to the English translations of the German Civil Code by Wang and Loewy give historical accounts of German law. Schuster's *Principles of German civil law* begins its introduction with a brief historical sketch.

We might profitably devote many pages to pointing out only the important books on legal history which were published during the sway of the historical school in the nineteenth century. The literature of the period is, however, discussed in the majority of the more recent works on legal history, so that, however tempting it may be to pay tribute to that remarkable scholarship which has explored the field of legal history with an industry and a detail hitherto

[1] Stintzing, R. von. Geschichte der deutschen rechtswissenschaft. 4 vols. v. 3 and 4 by Dr. Landsberg. Munich, R. Oldenburg, 1880–1910.

unknown, we must dismiss this voluminous work without comment, and pass on. To show that the work of these scholars was not in vain we may be pardoned in again making use of Maitland's words (Collected Papers, vol. III, p. 463):

> This people of pedants and dreamers, of antiquaries and metaphysicians, after discussing the history of every legal term and every legal idea, has made for itself what is out and away the best code that the world has yet seen.

The greatest living exponent of the history of German law is the venerable Prof. Heinrich Brunner of Berlin. His leading work, *Deutsche rechtsgeschichte* [1] was published in two volumes, 1887–1892; the first volume reached a second edition in 1906. The work constitutes part of a series edited by Prof. Binding, of Munich, under the title *Systematisches handbuch der deutschen rechtswissenschaft.* Each contribution to this collection is important. The first volume of Brunner's work treats of the early Germanic period and in a merely general way of the Frankish. The second treats especially of the Frankish period and of the different legal institutions of the Franks. Another similar work of Brunner's on German legal history is entitled *Grundzüge der deutschen rechtsgeschichte,*[2] the fourth edition of which appeared in 1910. It was originally a revision of Brunner's article *Quellen und geschichte des deutschen rechts,* which appeared in the fifth edition (1890) of Holtzendorff's *Encyklopädie.* It is a summary account only, but comes down to very modern times. His larger work, just mentioned, stops with the Frankish period and is, therefore, incomplete. Both contain copious bibliographic notes. In his *Forschungen zur geschichte des deutschen und französischen rechts,*[3] Prof. Brunner has collected a number of

[1] Brunner, H. Deutsche rechtsgeschichte. 2 vols. v. 1., 2d ed., 1906. Leipzig, Duncker & Humblot, 1906, 1892.

[2] Brunner, H. Grundzüge der deutschen rechtsgeschichte, 4th ed. Leipzig, Duncker & Humblot, 1910.

[3] Brunner, H. Forschungen zur geschichte des deutschen und französischen rechts. Stuttgart, J. G. Cotta, 1894. 750 p.

articles on the history of procedure and on criminal and civil law, previously published at various places.

A well-known treatise, very popular in German universities, is that by Prof. Schröder of Heidelberg, *Lehrbuch der deutschen rechtsgeschichte*,[1] the fifth edition of which appeared in 1907. It is learned, methodical and accurate, and plentifully supplied with bibliographic notes. It presents the whole of German legal history in compact form, somewhat analagous to the work of Viollet on French and Schupfer on Italian legal history. Prof. Heinrich Siegel's *Deutsche rechtsgeschichte*[2] is a brilliant work. Another well-known treatise is that by Prof. J. F. Schulte of Bonn, entitled *Lehrbuch der deutschen reichs- und rechtsgeschichte*.[3] It is a simple presentation, uncolored, of the public and private law of Germany, the various legal institutions being treated individually. A valuable work on the history of the sources of German law was published by Prof. Otto Stobbe, *Geschichte der deutschen rechtsquellen*.[4] It covers the period from the tribal laws to the first Commercial Code of 1861. It is still a standard work and excellent for the earlier legal literature. Two of the older works on German legal history which still enjoy a scholarly reputation are those by Prof. Zoepfl[5] and Prof. Walter.[6] Prof. Zoepfl separates the history of the sources from the history of the legal institutions, which he divides into public and

[1] Schroeder, R. K. H. Lehrbuch der deutschen rechtsgeschichte. 5th ed. Leipzig, Veit, 1907. 1016 p.

[2] Siegel, H. Deutsche rechtsgeschichte. Berlin, F. Vahlen, 1895. 593 p.

[3] Schulte, J. F. Lehrbuch der deutschen reichs- und rechtsgeschichte. 6th ed. Stuttgart, Nitzschke, 1892.

[4] Stobbe, Otto. Geschichte der deutschen rechtsquellen. Leipzig, Duncker & Humblot, 1860–1864. 2 v.

[5] Zoepfl, Heinrich Matthias. Deutsche rechtsgeschichte. 4th ed. Braunschweig, F. Wreden, 1871–72. 3 v. in 2.

[6] Walter, Ferdinand. Deutsche rechtsgeschichte. 2d ed. Bonn, A. Marcus, 1857. 2 v.

private law, civil and criminal law and procedure. The work is profusely supplied with footnotes. As an example of profound research on the subject of inheritance in Germanic law, we may mention the work of the late Dr. Julius Ficker,[1] who also did such scholarly work in Italian legal history.

A valuable periodical, the *Zeitschrift für rechtsgeschichte*, was founded in 1861 by several professors, and continued after its fourteenth volume under the title *Zeitschrift der Savignystiftung für rechtsgeschichte*. It still appears in the two parts which were then established, Roman law and German law (*Romanistische und Germanistische Abteilung*). Scholarly articles appear in it. A new periodical *Gaius, Zeitschrift für rechtsgeschichte* (Vienna, Manz) founded by Prof. Pineles, of the University of Vienna, has for one of its primary objects the study of questions of legal history. The first volume covers the years 1907–1910. Two collections of monographs on legal history, the one appearing under the general editorship of Prof. Otto Gierke [2] and the other lately begun by Prof. Konrad Beyerle,[3] while occasionally containing excellent contributions—especially those by Prof. Gierke—warrant only cursory attention in this survey.

The more important works dealing strictly with the history of Germanic law, will be mentioned below in discussing the elements which contributed to make up the present German Civil Code. Nevertheless, it may be well to call attention here to a collection of translations of works on continental

[1] Ficker, Julius. Untersuchungen zur erbenfolge der ostgermanischen rechte. Innsbruck, Wagner, 1891–1904. 6 v.

[2] Untersuchungen zur deutschen staats- und rechtsgeschichte Hrsg. von Gierke. Breslau, 1878–1911. 104 v.

[3] Beyerle, Konrad. Deutschrechtliche beiträge. Heidelberg, 1907–1911. 6 v.

legal history which is now being undertaken, and is to include several German works. [1]

The historical evolution of German civil law involves a study of the component elements which entered into the drafting of the present Civil Code. Prof. Gareis in his *Science of law*, pp. 114–118, describes the territorial distribution of the principal bodies of law which were in force in Germany before the enactment of the Civil Code. He describes these as (*a*) the "received"

[1] The Continental Legal History Series will include the following eleven volumes in English translation:

1. Historical survey of the sources, literature, and general development of continental law. By R. Altamira, H. Brissaud, H. Brunner, C. Calisse, E. Hertzberg, E. Huber, M. Planiol, R. Stintzing, J. A. Van Hamel, and others. Translated by Rapelje Howell, Francis S. Philbrick, and John H. Wigmore.
2. Great jurists of the world, from Papinian to von Ihering. By various authors.
3. History of French private law. By Henri Brissaud. Translated by Rapelje Howell.
4. History of Germanic private law. By Rudolf Huebner. Translated by Francis S. Philbrick.
5. History of continental criminal procedure, with special reference to France, and an excursus on Germany. By A. Esmein, with chapters by François Garraud, and by C. J. A. Mittermaier. Translated by John Simpson.
6. History of continental criminal law, with special reference to Germany, and an excursus on France. By Ludwig von Bar, with chapters by E. Glasson. Translated by Thomas S. Bell.
7. History of continental civil procedure, with special reference to Germany, and an excursus on France. By Arthur Engelmann, with a chapter by E. Glasson. Translated by Robert Wyness Millar.
8. History of Italian law. By Carlo Calisse. Translated by John Lisle.
9. History of French public law. By Henri Brissaud. Translated by Rapelje Howell.
10. History of continental commercial law. By Paul Huvelin. Translated by Ernest G. Lorenzen.
11. The evolution of law in Europe. By Gabriel Tarde and others.

The editorial committee is composed of Profs. Wigmore, Lorenzen, Freund, Huberich and Mikell. The publishers are Little, Brown, and Co. of Boston.

Roman law or "*Gemeines Recht;*" (*b*) the Prussian "*Landrecht,*" officially drawn up after many years of preparation in 1794, under the direction of Frederick the Great; (*c*) the French law in the upper Rhine region, and (*d*) the Saxon code of 1863. Dr. Ernest Schuster adds two further groups to the bodies of law then in force. But the two principal component systems of the present Civil Code are unquestionably the subsidiary common law or the Roman law as "received" and developed in Germany after 1495, and the Prussian "*Landrecht.*" Works, therefore, dealing with German private law before the enactment of the code may now be discussed under the head of legal history. They are usually written from the standpoint of the Germanist as opposed to that of the Romanist.

Leges Barbarorum

The works on German private law (*Deutsches Privatrecht*) are largely historical studies of the German folk laws or tribal laws of the period between the fifth and ninth centuries. A very good edition of these so-called barbarian laws (*Leges barbarorum*) is that by Canciani,[1] in five volumes, published at the end of the eighteenth century. Another text edition of these laws, including the *capitularia* was edited by Ferd. Walter[2] in three volumes. It may be well to mention the excellent edition of the Anglo-Saxon laws which have recently been edited by Dr. Felix Liebermann[3] at the instance of the Bavarian Academy, and at the expense of the Savigny-Stiftung für Rechtsgeschichte. Prof. Maitland, one of the greatest of modern English scholars, made the appearance of this edition the occasion for writing an essay on "The laws of the Anglo-Saxons," which he published in the Quarterly

[1] Canciani, Paolo. Barbarorum leges antiquae cum notis et glossariis . . . Venetiis, apud S. Coletium et F. Pitterium, 1781–92. 5 v.

[2] Walter, Ferd. Corpus juris germanici antiqui. Berlin, Reimer, 1824. 3 v.

[3] Liebermann, S. Die gesetze der Angelsachsen. I, II.[1] Hrsg. im auftrage der Savigny-stiftung. Halle, Niemeyer, 1898–1906.

Review, July 1904, and which is reprinted in the recent edition of the *Collected papers of Frederic William Maitland*, edited by Herbert Fisher, volume 3, pages 447–473. He discusses the previous editions of the Anglo-Saxon laws, and pays a flattering tribute to Liebermann's edition.

The most important of the *Leges barbarorum* is, of course, the *Lex Salica* or Salic law. Of this law we have an excellent English edition by Hessels and Kern,[1] published in 1880. A good French edition, an improvement on all previous editions, was that by Pardessus,[2] published by the French Government in 1843. The author gives all the existing versions of the *Lex Salica* in eight successive texts. The best modern German edition is that by J. F. Behrend,[3] published in 1897. Hessels, however, basing his remarks on the first edition, finds that this work does not afford the necessary facilities for synoptical study. Two important studies on the laws of the Salic Franks were published by the historian, Georg Waitz,[4] in 1846 and by Prof. Clement [5] (in a second edition by Prof. Zoepfl) in 1879. Nor should we fail to mention the excellent text and partly critical editions of the various *Leges Barbarorum* which appear in that monumental historical work, the *Monumenta Germaniæ Historica*.[6]

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[1] Hessels, J. H. & Kern, H. Lex salica: the ten texts with the glosses, and the lex emendata. London, J. Murray, 1880. 692 col. on 252 p.

[2] Pardessus, Jean Marie. Loi salique ou recueil contenant les anciennes redactions de cette loi et le texte connu sous le nom de lex emendata avec des notes et des dissertations. Paris, Imprimerie royale, 1843. 50+740 p.

[3] Behrend, F. J. Lex salica. 2d ed. by R. Behrend. Weimar, H. Bohlaus, 1897. 236 p.

[4] Waitz, Georg. Das alte recht der Salischen Franken. Kiel, 1846.

[5] Clement, K. J. Forschungen über das recht der Salischen Franken vor und in der königszeit. Hrsg. von H. Zoepfl. 2d ed. Berlin, 1879.

[6] Monumenta Germaniae historica. Berlin, Wiedmann, 1826–1909. Particularly the Leges and Constitutiones. Important editions of the old Germanic tribal laws are noted in Gierke, *Deutsches privatrecht*, I, p. 61, notes 2 and 3.

A good account of legislation and legal development in Germany from the fifth to the fourteenth centuries is contained in Chapter IV, volume 1, pages 156–231 of Herbert Fisher's *The medieval empire* (London, Macmillan, 1898). Some explanations of the various laws of the barbarian tribes of Germany are presented in an historical work on the structure of feudal society by Edgar H. McNeal in a University of Chicago doctor's dissertation, published in 1905.[1] He treats especially the Burgundian, Alemannic, Lombard, Visigothic, and Bavarian codes. A learned article on the spread of Germanic laws throughout the world was published as a rector's address by Prof. Karl Lehmann,[2] of Rostock, in 1905.

German Privatrecht

On German private law as a system, several learned treatises have been published. Perhaps the most celebrated is that of Prof. Otto Gierke,[3] of Berlin, the venerable Germanist, to whose work we shall have occasion to recur. It was published as a part of Binding's *Systematisches Handbuch*, to which we have already referred. It may be well here to point out a distinction which Germans make between "*Handbuch*" and "*Lehrbuch.*" The "*Handbuch*" is really a scientific treatment and critical discussion of the sources and other material, including the literature connected with a subject. The "*Lehrbuch*" is a treatise which presents positive law as a dogmatic system, without criticism, although historical development may be recognized. Our "handbook" is the equivalent of the German "*Handausgabe.*" The first volume of Gierke's work treats of general legal concepts and the general law of persons; volume two, of the law of things. Under the

[1] McNeal, Edgar H. Minores and mediocres in the Germanic tribal laws. Columbus, Hoer, 1905. 130 p.

[2] Lehmann, Karl. Rezeptionen germanischer rechte. Rede zur feier des 28 Februar 1905. Rostock, Adler, 1905. 32 p.

[3] Gierke, Otto Friedrich. Deutsches privatrecht. Leipzig, Duncker & Humblot, 1895–1905. 2 v.

rights of persons, the so-called "*immaterial rechte*" (rights in immaterial things, or what we might call incorporeal rights, patent right, copyright, etc.) are treated. Many German writers treat these rights as a part of the law of things; they divide "*Sachenrecht*" into the law of material things, or real rights, and the law of immaterial things, or rights peculiar to the person, such as patent and copyright. Another important work on German private law which has now gone through three editions, is the "*Handbuch*" of Prof. Stobbe,[1] the latest five volume edition of which was published between 1885 and 1900. Stobbe's work stands alone in its masterly working up of the Germanic sources and manuscripts. Besides its critical discussion of the sources and literature, it also examines existing law. Nor, in this connection, must the work of Prof. Karl von Amira,[2] the noted scholar of Munich, be left unmentioned. His *Grundriss des germanischen rechts* is deservedly held in high esteem. Konrad von Maurer's researches into the legal history and institutions of the northern Teutonic peoples have placed him in the front rank of legal historians.

Two works, both of which treat the subject matter from the Germanic viewpoint and which along historical lines follow the divisions of the present Civil Code, are those by Prof. Heusler [3] of Basel, one of the Binding series, and by Prof. Hübner [4] called "Principles of German private law." The latter is perhaps the best one volume edition on the subject.

[1] Stobbe, Otto. Handbuch des deutschen privatrechts. Berlin, W. Hertz, 1885–1900. 5 v. in 6. (v. I–IV, 3rd ed. 1895–1900; v. V, 2d ed. 1885.)

[2] Amira, Karl von. Grundriss des germanischen rechts. 2d ed. Strassburg, K. J. Trübner, 1901. (Reprint from H. Paul's Grundriss der germanischen philologie.)

[3] Heusler, Andreas. Institutionen des deutschen privatrechts. Leipzig, Duncker & Humblot, 1885–86. 2 v.

[4] Hübner, Rudolf. Grundzüge des deutschen privatrechts. Leipzig, A. Deichert, 1908. 757 p. Second edition in press.

It is shortly to be translated into English (see footnote, p. 46). A few other important works on the subject, of somewhat less value for present day study than those just mentioned, are the "*System*" of Prof. Beseler,[1] the father of the Germanists, and those by Prof. von Roth [2] and Prof. Gerber.[3]

We can not leave the subject of the history of German private law without mentioning a remarkable philological work which has become a classic. This is Grimm's celebrated *Deutsche rechtsalterthümer*,[4] first published in 1828, which in a fourth edition by Profs. Heusler and Hübner, appeared in 1899. The author was a philologist rather than a jurist. The history of legal institutions are traced from their philological symbols and their terminology.

Prussian Landrecht

The law of the Prussian "*Landrecht*" which exercised so much influence on the Civil Code is, perhaps, best presented in the work by Koch,[5] the eighth edition of which was completed in 1886. It treats the subject in the form of a commentary. By the term "*Kommentar*" (commentary), which will occur frequently in the course of this Guide, the Germans understand a treatment of a codified subject or of the sections of a statute, article by article, with notes and annotations under each. Two important works on Prussian private law are the treatise by Dernburg,[6] in three volumes, the fifth

[1] Beseler. System des gemeinen deutschen privatrechts. Leipzig, A. Deichert, 1908.

[2] Roth, Paul von. System des deutchen privatrechts. Tübingen, 1880–86. 3 v.

[3] Gerber. System des deutschen privatrechts. 17th ed. by Cosack, Jena, Fischer, 1895.

[4] Grimm, Jakob. Deutsche rechtalterthümer. 4th ed. by A. Heusler & R. Hübner. Leipzig, Dieterich, 1899. 2 v.

[5] Koch, C. F. Das allgemeine landrecht für die preussischen staaten. 8th ed., by A. Achilles, P. Hinschius, R. Johow & F. Vierhaus. Berlin, Guttentag, 1883–86. 4 v.

[6] Dernburg, Heinrich. Lehrbuch des preussischen privatrechts und der privatrechtsnormen des reichs. Halle a. S., Waisenhaus, 1894–97. 3 v.

edition of which was completed in 1897, and that by Förster[1] in four volumes, the seventh edition of which was completed in the same year. Another work, somewhat less useful, was edited by two judges, Rehbein[2] and Reincke. It is now out of print.

Saxon Code

A work on the private law of Saxony which is discussed in the protocols of the codifiers of the Civil Code, is that by Grützmann,[3] published at Leipzig in 1887–1889.

Baden Landrecht

A good edition of the "*Landrecht*" of Baden,[4] which contains most of the French elements which entered into the composition of the Civil Code, reached a fourth edition in 1899.

Reception of Roman Law

Roman law as it was in force on German territory after its so-called "Reception" in 1495, the date of the constitution of the Imperial Chamber Court (*Reichskammergericht*), entered very largely into the composition of the new Civil Code. This introduction of Roman law into Germany is one of the most important chapters in the history of law in Europe. It was one of the effects of the revival of classical learning, aided on the one hand by the political union of Germany and northern Italy, by which German students became imbued with the principles of Roman law, and, on the other hand, by the feeling that the German Emperor was the successor of the Roman Cæsars. This period of German law and its influence upon modern law is, of course, dealt with in all the more important general works on German legal history. An excellent essay by Prof. Grueber on the relation between Roman law and modern German law may be found in the introduction to Ledlie's English translation of Sohm's *Institutes*, first

[1] Förster, Franz A. A. Preussisches privatrecht. 7th ed., by M. E. Eccius. Berlin, G. Reimer, 1896–97. 4 v.

[2] Rehbein, Hugo & Reincke, Otto. Allgemeines landrecht für die preussischen staaten. . . 5th ed. Berlin, Muller, 1894. 4 v.

[3] Grützmann, P. Lehrbuch des kgl. sächsischen privatrechts. Leipzig, Breitkopf & Härtel, 1887–89. 2 v.

[4] Das Badische landrecht. 4th ed. Karlsruhe, Lang, 1899. 456 p.

edition.[1] One of the best treatments in English of the special period of the "reception" is presented in a small book recently published by Prof. Paul Vinogradoff of the University of Oxford, entitled *Roman law in mediæval Europe*.[2] The fate of the Roman law is dealt with in France, England and Germany, pages 106–131 covering the Roman law in Germany. The book is marked by the learning which characterizes all the work of its distinguished author. Mr. Holdsworth, the author of the monumental work on the "History of English law," has just published, in recent numbers of the Law Quarterly Review (v. 27, pp. 387–398; v. 28, pp. 39–51), an interesting account of the "Reception of Roman law in the sixteenth century." The first two installments of the article have thus far appeared. A good account of this period of German legal history may be found in chapter XV, pages 399–416 of Guy Carleton Lee's *Historical jurisprudence* (New York, Macmillan, 1900). It concludes with a brief sketch of the history of codification in Germany. John Chipman Gray in Appendix III (pp. 303–306) of his *Nature and sources of the law* deals with the "reception" of Roman law. He quotes largely from Stobbe. A valuable work on this period, which covers the literature exhaustively, was published by the eminent scholar R. Stintzing.[3] Two smaller monographs, by reason of the prominence which they have received in the literature, deserve special mention. The first is a work by Modderman published about 40 years ago,[4] and the other a recent work by Georg von Below.[5]

[1] Sohm, Rudolph. The institutes, a text book of the history and system of Roman private law, translated by James Crawford Ledlie. 3d ed. Oxford, 1907. 606 p. First ed. 1892.

[2] Vinogradoff, Paul. Roman law in mediaeval Europe. London and New York, Harper & Bros., 1909. 136 p.

[3] Stintzing, R. Geschichte der populären literatur des römischen-kanonischen rechts in Deutschland. Leipzig, 1867.

[4] Modderman, W. Die rezeption des römischen rechts. Aus dem Holländischen übersetzt von K. Schulz. Jena, Dufft, 1875. 128 p.

[5] Below, Georg von. Die ursachen der rezeption des römischen rechts in Deutschland. Munich, 1905. 166 p.

The classic work on modern Roman law is the eight volume "*System*" [1] of Savigny, which treats of general doctrines. Volumes 1, 2, and 8 have been translated into English.[2] The introduction to the English translation of volume 8 contains a short digest of the contents of the "*System.*" Savigny's work on *Obligationenrecht* (the law of obligations), two volumes of which had appeared up to 1853, was never completed. An English edition of this work in the form of an analysis, with notes, was published in 1872 by Archibald Brown.[3]

Pandektenrecht

Modern Roman law as expounded in Germany is known under the name of "*Pandektenrecht*" and consists largely of the digest of Justinian's *Corpus Juris*. Perhaps the most valuable of the works on "*Pandektenrecht*," although there are many excellent ones, is that by Prof. Windscheid, a very active member of the commission which drafted the first project of the Civil Code. His *Lehrbuch*,[4] the ninth edition of which was edited by Theodor Kipp in 1906, is valuable for its keen distinctions, its thoroughness and its critical discussion of the literature; its comparative presentation of Roman and German civil law also distinguishes this work. A hardly less important work is that by the late Prof. Dernburg,[5] the eighth edition of which, by Sokalowski, has recently appeared. It is distinguished by its account of the latest practice, its clear-

[1] Savigny, Friedrich Carl von. System des heutigen römischen rechts. Berlin, 1840–49. 8 v. & Sachen- und quellen-register . . . von O. L. Heusler. Berlin, 1851.

[2] Savigny, Friedrich Carl von. v. 1 by William Holloway (Madras, Higginbotham, 1867); v. 2 entitled *Jural relations* by W. G. Rattigan (London, Wiley, 1894); v. 8. The conflict of laws, by William Guthrie. 2d ed. Edinburgh, Clark, 1880.

[3] Savigny, Friedrich Carl von. An epitome and analysis of treatise on obligations in Roman law, with notes by Archibald Brown. London, 1872.

[4] Windscheid, Bernhard. Lehrbuch des pandektenrechts . . . 9th ed., by Theodor Kipp. Frankfurt a. M., Rütten & Loening, 1906. 3 v.

[5] Dernburg, Heinrich. Pandekten. 7th ed., by Johannes Biermann. Berlin, H. W. Müller, 1902–1903. 3 v. 8th ed., by Paul Sokalowski, 1911–1912.

ness and its splendid style. Another able, although incomplete work on the subject is that by Prof. Regelsberger,[1] of Göttingen, published in the series of Binding. It treats only of the general doctrines of law and the law of persons; it is distinguished by the thoroughness of its research. The work of Puchta,[2] one of the greatest Romanists of his time, is still consulted by legal scholars. The last edition was the twelfth in 1877. Nor should we fail to mention Puchta's well-known *Vorlesungen*[3] (lectures), the sixth edition of which appeared in two volumes in 1874. Prof. von Vangerow's *Leitfaden* (Guide),[4] the seventh edition of which was published in three volumes in 1863–1869, is valuable for its discussion of special detailed questions of Roman law. The treatise of Brinz,[5] in four volumes, which was partly written by Lotmar, also deserves attention. It is brilliant and exhaustive, but the material is, unfortunately, not well organized and arranged. A work of value in the investigation of the Roman law sources of modern German civil law is Prof. Heumann's *Handlexikon*,[6] the ninth edition of which was published by Seckel in 1907. It is exhaustive and reliable. For the same purpose, Bruns *Fontes*[7] are of value.

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[1] Regelsberger, Ferdinand. Pandekten. Leipzig, Duncker & Humblot, 1893. Regelsberger, who died within the last year, is considered one of the greatest of modern jurists. A biographical sketch by Prof. Knoke of Königsberg, with a complete bibliography of Regelsberger's writings appears in the last number of Jhering's Jahrbücher, v. 60, 1–5 heft (1911), p. 1–38.

[2] Puchta, G. F. Pandekten. 12th ed., by T. Schirmer. Leipzig, Barth, 1877.

[3] Puchta, G. F. Vorlesungen über das heutige römische recht. 6th ed. 1874. 2 v.

[4] Vangerow, Karl Adolph. Leitfaden für pandektenvorlesungen. 7th ed. Marburg and Leipzig, 1863–69. 3 v.

[5] Brinz. Lehrbuch der pandekten. 2d ed. 1873–92. 4 v.

[6] Heumann. Handlexikon zu den quellen des römischen rechts. 9th ed., by Seckel. Jena, Fischer, 1907.

[7] Bruns-Gradenwitz. Fontes juris romani antiqui. 7th ed. Tübingen, Mohr, 1909. 2 v.

GERMAN CIVIL CODE

History

The German Civil Code is the crowning achievement in the codification of German private law. The first step in the direction of uniform legislation in Germany was taken by the states of the *Zollverein*. Their delegates met at Leipzig in 1849 and drew up a uniform Bills of Exchange Act (*Wechselordnung*), which with some amendments (the Nurnberg Novels) was adopted by all the German States. The next landmark in codification was erected in 1861, when the Diet of the German Confederation recommended to the States the enactment of a Commercial Code, drawn up by a specially appointed commission. The legislative authority of the North German Federation, founded in 1867, was extended to include criminal law, judicial procedure, contracts, bills of exchange and commercial law. On this authority the Federation, in 1869, enacted the Bills of Exchange Act and the Commercial Code as Federal law. In 1871, on the formation of the Empire, civil and criminal procedure and criminal law were placed within the legislative jurisdiction of the Empire. In 1871 a Penal Code was adopted, and in 1877—a momentous year in the history of German codification—Federal Codes of Civil and Criminal Procedure and a Federal Judiciary Act and a Bankruptcy Act were placed on the statute books. The names of G. E. W. Leonhardt, Prussian minister of justice from 1867 to 1879, and Edouard Lasker, are prominently associated with this movement for the reform of German law. An account of the legislation which the various codes of 1877 superseded is contained in a series of articles by Dr. Edward Zimmerman, published in the Law Magazine and Review.[1]

Legislative history

By the constitutional amendment of December 20, 1873, to article 4, section 13 of the Constitution of April 16, 1871,

[1] Law Magazine and Review, N. S. v. 3 (1874) pp. 358–81, pp. 640–44 (should be 654); 4th series, v. 1 (1876) pp. 103–112.

the legislative power of the Empire was extended to the sphere of the entire civil law. The *Bundesrat* (Federal Council) thereupon appointed a commission of five leading jurists to report on a plan and method for undertaking the work of constructing a Civil Code. The suggestions of this commission were approved by the *Bundesrat* and on the 2d of July 1874, they appointed another commission of eleven members under the presidency of Dr. Pape, then chief justice of the *Oberhandelsgericht* at Leipzig. Of this commission, six members were judges, three were officials in the ministries of justice of their respective States, and two were university professors. The common law or "received" Roman law found its representatives in Profs. Windscheid, Roth, and Planck and Messrs. Kübel and Schmidt. The Prussian *Landrecht* was represented by Messrs. Pape, Johow and Kurlbaum. The French law in its original form and in the guise of Baden *Landrecht* was represented by Messrs. Derscheid and Gebhard, and the Saxon law by Dr. von Weber. The work of the commission was divided into five parts corresponding to the five general divisions of the present code: (1) general part, including the law of persons; (2) the law of obligations; (3) the law of things; (4) family law; and (5) the law of inheritance, each division being assigned to a committee. The work in committee took seven years, until 1881, and from that time until 1887 the commission worked in committee of the whole, debating the matter for six years. In 1887, they reported out a draft of the code (*Entwurf*) which, with their report, was handed to the Imperial chancellor on December 27, 1887.

In an article by Prof. Ernst Freund in the American Law Review, volume 24 (1890), pages 237–254, there is a scholarly account of the principles which governed the codifiers, the contents of the code, the material excluded, the method of work and the difficulties encountered, together with a

general discussion of the theory of codification. In the course of an article on "State statute and common law," Prof. Munroe Smith, in the Political Science Quarterly, volume 3 (1888), pages 155–160, summarizes the history of codification in Germany. Dr. Ernest Schuster, who has done so much to familiarize English lawyers with German civil law, published a learned article in the Law Quarterly Review, volume 12 (1896), pages 17–35, dealing with the history of codification and especially with the preparatory work in the formation of the present Civil Code. The same subject is treated in an interesting article by Prof. A. Pearce Higgins in the Journal of the Society of Comparative Legislation, volume 6, new series (1905), pages 95–105. Prof. Maitland delivered a presidential address to the Social and Political Educational League in 1906 entitled "The making of the German Civil Code," which was published in the Independent Review, August, 1906, and is reprinted in his *Collected papers*, recently edited by H. A. L. Fisher, in volume 3, pages 474–488. In his brilliant way and in popular language he describes the methods by which the code was enacted. One sentence may be quoted:

> Never yet, I think, has so much first-rate brain power been put into an act of legislation.

Most interesting details of the work of the first commission are given by Privy Councillor Dr. Vierhaus (then a judge of the Court of Appeal in Cassel) in his *Entstehungsgeschichte des entwurfes eines B. G. B.* [*Bürgerliches Gesetzbuch*] *für das deutsche reich* (Berlin, Guttentag, 1888). The protocols of the first commission, whose labors ended in 1887, occupy over 12,000 mimeograph folio pages; they were never published for the general public. The draft code which they submitted was published officially in 1888 under the title *Entwurf eines B. G. B. für das deutsche reich. Erste lesung. Amtliche ausgabe* (Berlin, Guttentag, 1888), together with a draft of the

Introductory Act entitled *Entwurf eines einführungsgesetzes für das B. G. B. nebst motiven* (Guttentag, 1888). A publication of great value for an understanding of the history of the code and the legislative intentions of the commission are five volumes of analyses and preliminary materials for the first draft which were published officially at the same time, under the title *Motive zu dem entwurfe eines B. G. B. für das deutsche reich, Amtliche ausgabe*, the second edition of which was published by Guttentag in 1897. One volume is devoted to each part of the code. An index to the draft and to the "*Motiven*" was prepared by Dr. Jatzow in 1888. These volumes constitute an important work of reference, in which the local law on the subjects embodied in the code may be found concisely and accurately stated. The 1888 draft with the "*Motiven*" was distributed throughout the Empire. The object was to elicit criticism, as is stated in the introduction of the circular accompanying the draft. The statement of the chancellor of his readiness to receive and entertain all communications relating to the subject brought in prolific criticisms. Those criticisms which made their appearance up to November, 1890, were officially published under the title *Zusammenstellung der gutachtlichen äusserungen zu dem entwurfe eines B. G. B.* (Berlin, Norddeutsche Buchdruckerei, 1890–91, 6 vols.), together with another collection of criticisms on the Introductory Act entitled *Zusammenstellung der gutachtlichen äusserungen zu dem entwurfe eines einführungsgesetzes zum B. G. B.* The individual governments of the Empire also complied with a request of the chancellor of June 27, 1889, to submit propositions and critical opinions on the first draft. They were edited in the *Reichsjustizamt* and published under the title *Zusammenstellung der äusserungen der bundesregierungen zu dem entwurfe eines B. G. B., gefertigt im reichsjustizamt.* It would not be proper to leave this matter of the critical opinions thus elicited without referring to the criticism

of Prof. Gierke, a strong believer in the "social" superiority of German over Roman legal ideas. His criticism, published under the title *Der entwurf eines B. G. B. u. das deutsche recht* (The draft of a civil code and the German law),[1] exercised a greater influence on the second draft and its changes than that of any other individual. It is the clearest and most eloquent summary of the various objections brought against the proposed code, and is a most readable account of its leading provisions and principles. Prof. Felix Dahn, in an article published in the Juridical Review, volume 2 (1890), pages 15–26, in a critical discussion deprecates the prevalence of the Roman element in the draft at the expense of the German.[2]

A second commission under the chairmanship of Prof. Planck was appointed in 1892, which acted on the bases of the first draft, account being taken of the criticisms that had been published. They reported out a revised draft under the title *Entwurf eines B. G. B. für das deutsche reich. Zweite lesung. Nach den beschlüssen der redaktions-kommission. Auf amtliche veranlassung* (Berlin, 1895). The protocols of this commission, which covered over 9,500 folio pages, were mimeographed, as were those of the first commission, but were subsequently edited in the *Reichsjustizamt* and published in seven volumes under the title *Protokolle der kommission für die II. lesung des entwurfes des B. G. B. Im auftrage des reichsjustizamtes bearbeitet von Dr. Achilles, Reichsgerichtsrath a D., Dr. Spahn, k. preuss. kammergerichtsrath, Dr. Gebhard, grossh. badischer Geh. Rath* (Berlin, Guttentag, 1897–1899). The draft of this commission was submitted to the *Bundesrat*, who submitted it with amend-

[1] Gierke, O. Der entwurf eines B. G. B. und das deutsche recht. Leipzig, Duncker & Humblot, 1889. 592 p.

[2] For the literature concerning the criticisms of the draft, see Gierke, Deutsches privatrecht, I, p. 59, note 27. For the literature concerning the entire draft see a pamphlet by K. F. Reatz, Die litteratur über den entwurf eines B. G. B., Leipzig, Hinrichs, 1895.

ments, together with an Introductory Act, to the *Reichstag* under the title *Entwurf eines B. G. B. und eines zugehörigen E. G. sowie eines gesetzes betr. aenderungen des gerichtsverfassungsgesetzes, der C. P. O., der K. O. und des E. G. zur C. P. O. und K. O. In der fassung der bundesrathsvorlagen. Auf amtliche veranlassung.* Together with this draft, the *Bundesrat* submitted to the *Reichstag* a memorial entitled *Denkschrift zum entwurf eines B. G. B.*, with three appendices, which was published officially in 1896. The debates of the *Bundesrat* on the draft of the second commission were not published. Their conclusions may be gathered from the differences which appear between the third draft (*the Reichstagsvorlage*), which they submitted to the *Reichstag*, as compared with the second draft. The report of the committee of the *Reichstag* which considered the draft, was published under the title *Bericht der reichstagskommission über den entwurf eines B. G. B. und eines E. G. nebst einer zusammenstellung der kommissionbeschlüsse. Berichterstatter: Abgeordnete Dr. Enneccerus, Dr. v. Buchka, Dr. Bachem, Dr. Schröder* (Berlin, 1896). The debates of the *Reichstag* on the draft submitted by the *Bundesrat* were published in the regular *Drucksachen und stenographischen berichte des reichstags, 9. Legislaturperiode, 4. Session 1895–1896*, and appeared separately in the book trade under the title *Erste, zweite und dritte berathung des entwurfes eines B. G. B. im reichstag, stenographische berichte* (Berlin, 1896). The final draft was published under the title *Entwurfe zum B. G. B. und einführungsgesetz in der fassung der vom reichstag gemachten vorlage* (Berlin, Guttentag, 1896), and an index published by Heymann the same year. A private publication which is valuable as an abridged edition of the essentials of the legislative antecedents of the code is that edited by Mugdan,[1] in six volumes, including the index. It reports the

[1] Mugdan, B. Die gesammten materialien zum Bürgerlichen gesetzbuch für das Deutsche Reich. Berlin, R. v. Decker, 1899. 6 v.

"motives," the draft, the protocols, the parliamentary reports and discussions, and gives the legislative antecedents of the various sections of the code. Beginning with the draft of the first commission, it follows each section through its legislative career in the form of a table. The code with its introductory statute was adopted August 18, 1896, and came into force on January 1, 1900.

Contents

The German Civil Code is divided into five books, together with an Introductory Act which prepares the way for the general application of the code provisions.

Book I of the Civil Code deals generally with the law of persons and is divided into seven sections.

Section 1 deals with persons, including natural persons and juristic persons. Juristic persons are dealt with under three headings: associations in general, registered and unregistered, including corporations, partnerships and unincorporated societies; foundations or endowments; and juristic persons in public law.

The second section deals with the various kinds of things, consumable and permanent, fixtures and appurtenances, fruits and usufruct.

The third section deals with juristic acts and includes capacity, the effect of declarations of intention or expression of will, contracts, conditions and limitations of time, representation and agency in general, including ratification.

The fourth section deals with periods of time and the manner in which they are to be calculated. Section 5 deals with prescription and statutes of limitation in different kinds of actions. Section 6 deals with the exercise of rights, self-defense and self-help; section 7, with security and bail.

Book II deals generally with the law of obligations, and is divided into seven sections.

Section 1 deals with the scope of obligations, the requirement to perform contracts and the effect of a breach, and in general with the relation between debtor and creditor, including the rules concerning damages.

Section 2 deals with obligations ex contractu and concerns especially the creation of a contract and its content. One division is devoted to the effect of a mutual or bilateral contract, and another to the effect of a promise to perform in favor of a third party. The second section also deals with earnest money and the penalties fixed by the contract for a breach. The last part of the section covers the withdrawal of parties under the contract.

Section 3 deals with extinction or cancellation of obligations, or what we would call the performance of contracts. In this section are discussed such subjects as pledge, attachment, set-off and release.

Section 4 deals with the assignment or transfer of claims; section 5 with the assumption of debt or novation; section 6 with the plurality of debtors and creditors, such as joint debtors and creditors and the divisibility and indivisibility of performance.

Section 7 deals with particular kinds of contracts and is divided into 25 titles. The first title deals generally with purchase and sale and exchange. The second title deals with gifts and their conditions. Title 3 deals with leases, rents, and the general relations existing between landlord and tenant. The next few titles in their order deal with certain bailments, loans for use, loans for consumption, contracts for service, and for work. Title 8 deals with brokerage; title 9, with the promise of reward. Titles 10 to 13, inclusive, deal with the following bailments: Mandate, unauthorized management of others' affairs, custody of movable things on deposit, and the liability of innkeepers. The fourteenth title deals with general partnership relations, although Book II

of the Commercial Code deals with the special rules concerning commercial partnerships. Title 15 deals with the community of ownership; title 16 with annuities. Title 17 deals with gaming contracts. Suretyship is covered in title 18. Title 19 concerns compromise; title 20, the acknowledgment of and the promise to pay debts. Title 21 deals with orders and drafts; title 22 with obligations to bearer. Title 23 concerns discovery and the production of chattels and instruments on demand. Title 24 deals with unjust enrichment, and title 25 with certain torts and tort liability.

Book III deals with the law of things and covers largely the law of real property. It is divided into nine sections.

Section 1 deals with possession, its acquisition and its loss and the various kinds of possession.

Section 2 deals with general provisions relating to rights over land, their acquisition, loss and alteration, together with certain provisions concerning the operation of the Land Registry Act.

Section 3 deals with the general subject of ownership and is divided into five titles. Title 1 deals with the scope of ownership and includes the rights of adjoining owners of land, rights of way and boundaries. Title 2 deals with the acquisition and loss of ownership in land and title 3 with the acquisition and loss of ownership of movables. Title 3 is subdivided into six heads; the first deals with the transfer of ownership of movables, the second with usucaption and ownership by prescription, the third with mingling of goods, confusion and specification, the fourth with the acquisition of products and other component parts of a thing, the fifth with appropriation, which includes abandonment of things, especially animals, and the sixth with finding and the rights of the finder. Title 4 of the third section deals with the rights and duties arising out of ownership. Title 5 deals with co-ownership.

Section 4 deals with heritable building rights (*Erbbaurecht*).

Section 5 deals with servitudes and is divided into three titles. The first covers the law of real servitudes, the second usufruct, which is divided into the usufruct of things, the usufruct of rights and the usufruct of a person's whole property. The third title deals with limited personal servitudes.

Section 6 deals with the real right of preemption (*Vorkaufsrecht*); section 7 with perpetual charges on land; and section 8 with mortgage, land charges and annuity charges.

Section 9 deals with the pledge of movables and pledge of rights.

Book IV on family law is divided into three broad sections: First, civil marriage; second, relationship; third, guardianship.

Section 1 is divided into eight titles. The first deals with the rights and duties growing out of betrothal; the second with the consummation of the marriage and with marital rights. The third deals with voidable and void marriages. The fourth deals with remarriage in case one of the spouses is declared legally dead. The fifth deals with the effects of the marriage relation in general. The sixth deals with matrimonial rights over property. This sixth title is subdivided into three parts; the first deals with the statutory regime over the matrimonial property, and includes, besides general provisions, the rights of management and use, the liability for debts, and the management of separate property. Part 2 deals with the contractual regime or the property rights resulting out of the marriage contract. Besides its general provisions it deals with the general community of goods, the community of income and profits and the community of movables. Part 3 deals with the marriage property register. Title 7 of this first section deals with the dissolution of marriage and divorce; title 8 provides that obligations to the church remain unaffected by the code.

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The second section, dealing with relationship, covers eight titles. The first deals with general provisions; the second, with legitimate descent; the third, with the duty of maintenance of relatives; the fourth, with the legal status of legitimate children and the relations of parent and child. Title 5 deals with the legal status of children born of void marriages; the sixth with the legal status of illegitimate children. Title 7 is concerned with the legitimation of illegitimate children and title 8 with adoption.

The third section deals with guardianship and is divided into three titles. The first, guardianship over minors, the second, guardianship over persons of full age, and the third, curatorship. The first title is the most important of these and deals with the establishment, conduct, responsibility, supervision and termination of guardianship.

Book V deals with the law of inheritance and is divided into nine sections. The first section deals with the order of succession of heirs. The second section deals with the legal status of an heir and is subdivided into four titles. The first deals with the acceptance and renunciation of the inheritance and the supervision of the probate court. The second title deals with the liability of an heir for the obligations and debts of the estate, and includes among other things, the procedure for fixing the liability and establishing the amount of the estate. The third title deals with claims to the inheritance on the part of the heir. Title 4 deals with the plurality of heirs and the legal relations between the heirs and the creditors of the estate.

The third section deals with the written will or testament and is subdivided into eight titles. These cover the following subjects: General provisions, appointment of the heir, appointment of the reversionary heir, bequests and legacies, testamentary charges and burdens, executors, execution and revocation of a will, and joint and mutual wills.

The fourth section of Book V deals with the contract of inheritance; the fifth, with compulsory portion; the sixth, with unworthiness to inherit, or disqualification to become an heir; the seventh, with renunciation of the inheritance; the eighth, with certificate of inheritance; and the ninth, with the purchase of the inheritance.

Introductory Act

The Introductory Act is extremely important and is divided into four sections: First, general provisions; second, the relation of the Civil Code to the laws of the Empire; third, the relation of the code to the laws of the States; fourth, transitory provisions. In some matters the existing imperial law has been retained, as, for example, commercial law (with slight modifications necessitated by the new Civil Code), the law of patents, copyright, insurance, and other matters. Rights of legislation in a number of matters have been left to the States, the farmer's and the peasant's position in relation to land having been altered as little as possible. Furthermore, the rules relating to mines and minerals, the right of eminent domain, manorial rights, and partition of common lands, and other matters are left to State legislation. Besides this, a number of local customs identified with towns and communities since time immemorial are left unaffected by the code. These include certain regulations concerning family settlements, feudal tenures, restrictions as to the subdivision of agricultural and forest land, the use of streams and water courses, game laws, certain customs as to leases and certain rules as to domestic servants.[1]

In order to harmonize the local law with the new imperial law, to furnish the transition between the old and the new law, and at the same time to regulate the matters left to State legislation, all the States of the Empire enacted what they called "*Ausführungsgesetze*" to the Civil Code.

[1] For the subjects excluded from the code see Gierke "Deutsches privatrecht," I, p. 59.

The subjects which have been left to the jurisdiction of the States are in these laws largely recodified and the repealed matter cleared away. These State laws have been collected in two large volumes and two supplements by Dr. H. Becher [1] and are published at Munich.

Schuster makes the following pertinent suggestion to the investigator of German law:

> In order to find out the law on any given point, it is not sufficient to refer to the provisions of the Civil Code and Commercial Code, or of any other imperial statute that may be applicable to the matter in hand, but in each case it must be ascertained (1) whether the subject of the inquiry is one on which the State law, including the *Ausführungsgesetz* of the particular State, contains any supplementary provisions, (2) whether any imperial customary law affects the particular subject; (3) whether, in the event of the subject being one which may be affected by State law, any local customary law relating thereto is in existence.
>
> These circumstances alone make it clear that the Civil Code did not either in intention or in effect, reduce the whole of German law into one compact mass.

Sections 7 to 31 of the Introductory Act contain the important rules on the conflict of laws. They are somewhat affected by the Hague conferences on private international law, especially that of June 12, 1902. These articles cover the questions of capacity, corporations and partnerships, form, torts, marriage and divorce, succession and general rules as to the application of local and foreign law. Articles 27 and 28 deal with the question of "renvoi" which has been so excellently discussed by Prof. Lorenzen in two notable articles in the Columbia Law Review, March and April, 1910. An explanatory article on the private international law of the German Civil Code was published by Prof. Lorenzen in volume 1 (1908) of the Annual Bulletin of the Comparative Law Bureau, pages 36–41. An article by Julius Hirschfield published in the Law Quarterly Review, volume 16 (1900),

[1] Becher, Heinrich. Die ausführungsgesetze zum Bürgerlichen gesetzbuche . . . München, J. Schweitzer, 1901. 2 v. and Supplements. Supplement two is in 2 parts, 1911.

pages 88–91, presents a summary of sections 7–31 of the Introductory Act.

In addition, several noteworthy monographs on the private international law of the Civil Code, discussing these sections, have been published. One of the most important of these is by Prof. Niemeyer[1] of Kiel, editor of the *Zeitschrift für internationales recht.* It is a scholarly treatise and discusses the subject as connected with and apart from the Civil Code. An interesting history of the origin of the private international law of the code is presented in the first few pages. Another important work is that by Dr. Habicht,[2] judge and councillor in the ministry of justice, edited after his death by Max Greiff. Account is taken of the Hague convention of June 12, 1902, and there are copious references to authoritative literature. It appears in the form of a commentary, discussing the rules section by section, as they appear in the Introductory Act. Another important treatise on the subject was published by the late Prof. Barazetti,[3] of Heidelberg; he undertakes a critical discussion of that part of the Introductory act. Prof. Zitelmann[4] presents the provisions of articles 7–31 in a very original form. In eight columns he shows the gradual development of each of these articles from the first preliminary draft of the first commission, through its fate in the second commission and the other drafts, its discussions in the lower house and finally as an adopted law.

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[1] Niemeyer, Theodor. Das internationale privatrecht des Bürgerlichen gesetzbuchs. Berlin, J. Guttentag, 1901. 222 p.

[2] Habicht, Hermann. Internationales privatrecht nach dem Einführungsgesetze zum Bürgerlichen gesetzbuche. Aus dem nachlasse hrsg. von. Max Greiff. Berlin, J. Guttentag, 1907. 254 p.

[3] Barazetti, Caesar. Das internationale privatrecht im Bürgerlichen gesetzbuche für das Deutsche Reich. Hannover, Helwing, 1897. 123 p.

[4] Zitelmann, Ernst . . . Artikel 7 bis 31 des einführungsgesetzes zum Bürgerlichen gesetzbuch für das Deutsche Reich. Leipzig, Duncker & Humblot, 1908. 49 p.

General Literature

Dr. Ernest J. Schuster, in the Journal of the Society of Comparative Legislation, volume 1 (1896–1897), pages 191–211, analyzed the various parts of the code and gave a descriptive sketch of its important sections. An able article by Prof. Ernst Freund which was published in the Harvard Law Review, volume 13 (1900), pages 627–637, gives a history of the drafting of the code up to its final adoption, together with a general survey of its system. Two longer articles by W. W. Smithers, the editor of the Comparative Law Bulletin, which were published in the American Law Register, volume 50 (1902), pages 685–717; volume 51 (1903), pages 14–32, contain an historical account of the political and legal conditions prevailing in Germany from the *Leges Barbarorum* until the present Civil Code, the method of construction of which is described. The second of these articles is an analysis of the contents of the five books of the code. In the American Law Review, volume 35 (1901), pages 190–213, Adolph Eichholz published a critical article explaining special points in the code, of interest to American lawyers. Prof. F. P. Walton of Montreal, in the Juridical Review, volume 16 (1904), pages 148–168 (reprinted in the Canadian Law Review, vol. 4, 1904, pp. 372–388), undertakes a critical survey of certain parts of the code, especially the sections dealing with marriage and divorce, matrimonial property and parts of the law of obligations.

The enactment of the Civil Code necessitated as well the enactment or amendment of other laws, of which the following are the most important: the Land Registry Act (*Reichsgrundbuchordnung*) of March 24, 1897; the law concerning executions against real property (*Gesetz über die Zwangsversteigerung und Zwangsverwaltung*) of March 27, 1897; the law concerning noncontentious jurisdiction (*Reichsgesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*) of May 17, 1898, and certain changes in the Codes of Civil and Criminal Procedure,

and in the Judiciary and Bankruptcy Acts, which were published in their amended form in 1898.

The new code, in force on January 1, 1900, necessitated renewed study on the part of the practicing lawyers of the time. In order to introduce them to the new code, from the standpoint of the then existing law, several works were published treating the subject from the comparative point of view. The firm of Otto Liebmann in Berlin undertook to facilitate the transition from the old to the new law in a series entitled "*Vergleichende Darstellung*".[1] Three volumes were published in the series, one by Buchka,[2] comparing the common law (the "received" Roman law) with the new code; one by Dr. Franz Leske,[3] the talented editor of the well-known work *Rechtsverfolgung im internationalen verkehr*, comparing the Prussian *Landrecht* with the new code; and one by Judge R. Förtsch [4] of the imperial supreme court, who compared the Civil Code of France with the new German Civil Code. A useful book is that by Dr. Habicht [5] on the influence of the new code upon preexisting legal conditions. A similar work was published by Dr. Kuhlenbeck;[6] it aims to furnish the transition between the

[1] Vergleichende darstellung des Bürgerlichen gesetzbuches für das Deutsche Reich und der landesrechte. Berlin, O. Liebmann, 1899–1903.

[2] Buchka, Gerhard. Vergleichende darstellung des Bürgerlichen gesetzbuches für das Deutsche Reich und des gemeinen rechts. 3d ed. Berlin, O. Liebmann, 1899. 535 p.

[3] Leske, Franz. Vergleichende darstellung des Bürgerlichen gesetzbuches für das Deutsche Reich und des Preussischen allgemeinen landrechts. 1st and 2d ed. Berlin, O. Liebmann, 1900–1903. 2 v.

[4] Förtsch, R. Vergleichende darstellung des Code civil und des Bürgerlichen gesetzbuches für das Deutsche Reich. 2d ed. Berlin, O. Liebmann, 1899. 370 p.

[5] Habicht, H. Die einwirkung des Bürgerlichen gesetzbuches auf zuvor entstandene rechtsverhältnisse. 3d ed. Jena, G. Fischer, 1901. 817 p.

[6] Kuhlenbeck, L. Von den pandekten zum Bürgerlichen gesetzbuch. Berlin, Heymann, 1898. 587 p.

common law (*Pandekten*) and the new code. Ernst Barre [1] also wrote a book comparing the German and the French Civil Codes. It was published in both languages. A work by Paul Posener [2] treating of the relation between imperial and State law, while not especially valuable, does cover a very difficult part of the Introductory Act.

The literature of the Civil Code is contained in the bibliographies mentioned at the beginning of this Guide. Those by Dr. Maas are of much value, especially a pamphlet presenting the official literature of the subject.[3] The bibliographies appearing in the *Archiv für bürgerliches recht* since volume 16 are important.

The Civil Code itself has received extensive treatment in the English language. Two translations of the code have been published and one very important treatise. The treatise of Dr. Ernest J. Schuster [4] on *The principles of German civil law* is unquestionably the ablest presentation of German civil law that has appeared in the English language. Occasional comparison with principles of English law and practical illustrations add to the value of this indispensable work. There are two English translations of the code; one by Chung Hui Wang,[5] published in London in 1907, and the other by Walter Loewy,[6] published by the Boston Book Co. in 1909. Wang's

[1] Barre, Ernst. Le code civil allemand et le code civil français comparés entre eux. 2d ed. tr. by Jacques Hartmann. Berlin, C. Heymann, 1899. 270 p. (published in German in 1897).

[2] Posener, Paul. Das deutsche reichsrecht in verhältnisse zum landesrecht. Breslau, M. & H. Marcus, 1900. 165 p.

[3] Maas, F. Bibliographie der amtlichen materialien zum B. G. B. Berlin, Guttentag, 1897. 35 p.

[4] Schuster, Ernest J. The principles of German civil law. Oxford, The Clarendon Press, 1907. 684 p.

[5] Wang, Chung Hui. The German civil code, translated and annotated. London, Stevens & Sons, 1907. 631 p.

[6] Loewy, Walter. The civil code of the German Empire as enacted on August 18, 1896, with the introductory statute. Translated by Walter Loewy. Boston, The Boston Book Co., 1909. 689 p.

edition appears to be slightly the better. These works all contain historical introductions. Gareis' *Science of law* (see footnote, p. 22) must not fail of mention in this connection, as it presents in systematic outline a brief description of the principal divisions of German private law. The *Comité de Legislation Etrangère* of Paris, whose potential activities have been greatly increased by the French law of July 21, 1910, undertook in 1900 an excellent three volume translation into French of the German Civil Code.[1] The translation, which was made by seven distinguished professors and advocates, is accompanied by an exhaustive commentary with critical notes. Its publication was anticipated by one of the translators, the talented Prof. Saleilles, of Paris, who in a small monograph entitled "An introduction to the study of German civil law," [2] gives an excellent historical account of the new code and the legal conditions prevailing in Germany. There are other French translations of less importance.

German editions of the Civil Code vary in size and in manner of treatment. A handy edition is the one volume work by Drs. Fischer and Henle,[3] the eighth edition of which appeared in 1909. A somewhat larger edition, in three volumes, very popular among German lawyers, is that by Hugo Neumann,[4] the fifth edition of which likewise appeared in 1909. Both of these editions contain short annotations.

Attention has already been called to the distinction made by Germans between the "*kommentar*" (commentary), the "*lehrbuch*" (treatise) and the "*handbuch.*" Exhaustive edi-

[1] Code civil allemand promulgué le 18 août 1896, entré en vigueur le 1er janvier 1900 . . . Paris, l'Imprimerie nationale, 1904–1908. 3 v.

[2] Saleilles, Raymond. Introduction à l'étude du droit civil allemand. . . . Paris, F. Pichon, 1904. 124 p.

[3] Fischer und Henle. Bürgerliches gesetzbuch vom 18. august 1896 nebst dem Einführungsgesetze. hrsg. von Dr. Otto Fischer . . . und Dr. Wilhelm von Henle . . . 8th ed., München, C. H. Beck, 1909.

[4] Neumann, Hugo. Handausgabe des B. G. B. 5th ed., Berlin, Vahlen, 1909. 3 v.

tions of the German Civil Code appear in the form of commentaries and treatises. The leading commentary on the Civil Code is that edited by the late Prof. Planck[1] of Göttingen, with the assistance of other authorities. Prof. Planck was the chairman of the committee on family law in the commission which drew up the first draft of the Code, and the general chairman of the entire second commission. He was responsible for many of the technical changes made in the second draft. Another leading commentary used with especial favor in South Germany is that edited by Prof. J. von Staudinger[2] with the assistance of other able lawyers and professors, the fifth to sixth edition of which has just been completed (1911) in six volumes. A commentary on the Civil Code,[3] in two volumes, edited by a committee of supreme court judges, has just come from the press. It annotates the code, with especial emphasis on supreme court decisions.

The treatises on German civil law are many in number, most of them scholarly works of the highest value. One of the most important is that by Prof. Endemann,[4] of Heidelberg, the ninth edition of which appeared in 1903–1908. The entire civil law of the Empire is presented, not merely as a

[1] Planck, G. Bürgerliches gesetzbuch nebst Einführungsgesetz, Erläutert von Dr. G. Planck. in verbindung mit Dr. A. Achilles . . . Dr. F. Andre . . . M. Greiff . . . F. Ritgen . . . O. Strecker . . . Dr. E. Strohal . . . Dr. K. Unzner . . . 3d ed. Berlin, J. Guttentag, 1903–1908. 7 v.

[2] Staudinger, J. von. Kommentar zum bürgerlichen gesetzbuch und dem Einführungsgesetze; Hrsg. von Theodor Loewenfeld, Philipp Mayring, Theodor Engelmann, Erwin Riezler, Karl Kober, Felix Heizfolder und Joseph Wagner. 5th and 6th ed. Munchen, 1909–1911. 6 v. in 7. On Staudinger's *Kommentar* see an article in the Juristisches Literaturblatt, XXIV, January 15, 1912, pp. 3–4.

[3] Das bürgerliche gesetzbuch mit besonderer berücksichtigung der rechtsprechung des reichsgerichts, erläutert von G. Hoffmann, etc . . . Nurnberg & Leipzig. U. E. Sebald, 1910. 2 v. Called also Kommentar von Reichsgerichtsräten.

[4] Endemann, Friedrich. Lehrbuch des bürgerlichen rechts. 9th ed. Berlin, C. Heymanns verlag, 1903–1908. 2 v. in 3.

Civil Code but in its relation to the laws of the States. Family law is the last subject treated, the law of inheritance being omitted. Ludwig Enneccerus,[1] professor at Marburg, with the cooperation of Profs. Kipp and Wolff, has published one of the most learned treatises on the subject. The first volume of the fifth edition was issued in 1909, two volumes having been published up to the present time. The great demand for this work has caused the publishers (January, 1912) to bring out the first volume in a sixth-eighth edition. We may say here that the Germans publish their larger works in successive signatures.

Somewhat less valuable than Enneccerus' work is the treatise of Prof. Cosack,[2] of Bonn, the noted authority on commercial law. His two volumes, the fifth edition of which has recently been completed (1909–1911), are not quite so thorough as the treatise of Enneccerus. An exhaustive treatise, both theoretical and practical, is that of Prof. Crome[3] of Bonn, the fourth and last volume of which appeared in 1908. The author takes account of State law and the provisions of the code are explained, although the work is not a commentary. There is a good historical introduction, as well as a scholarly treatment of the literary history and the laws supplementary to the code. A prominent place should be given to the exhaustive work of the late Prof. Dernburg,[4] of Berlin, who in six volumes treats of the civil law of the Empire and Prussia.

[1] Enneccerus, Ludwig. Lehrbuch des bürgerlichen rechts, von dr. Ludwig Enneccerus . . . dr. Theodor Kipp . . . und dr. Martin Wolff . . . 4th and 5th ed. Marburg, N. G. Elwert'sche verlagsbuchhandlung, 1909. v. 1 (6th to 8th ed.), 1912. One thousand copies constitute one edition in Germany.

[2] Cosack, Konrad. Lehrbuch des deutschen bürgerlichen rechts. 5th ed. Jena, Fischer, 1909–1911. 2 v.

[3] Crome, Carl. System des deutschen bürgerlichen rechts. Tübingen and Leipzig, J. C. B. Mohr (P. Siebeck), 1900–1908. 4 v.

[4] Dernburg, H. Das bürgerliche recht des Deutschen Reichs und Preussens. 3rd ed. Halle, Waisenhaus, 1906–1911. 6 v. in 7.

Supplements to the work, of which eight have already appeared, cover the private law of the more important States of the Empire. The sixth volume of the work, which deals with copyright, patents and trademarks, insurance and procedure, was begun by Dernburg and finished by Prof. Kohler after the former's death. The law of bills of exchange is included in the work. Prof. Kohler's [1] own work on civil law merits attention, as does a popular treatise by P. Simeon.[2] The latter also covers procedure. A work for students, presenting the existing civil law in simple historical development, including commercial and maritime law, is that by Dr. Arthur Engelmann,[3] superior court judge and professor. Another student's edition of German law to which attention may be called is published by Dr. Heilfron,[4] and covers legal history and other branches of law besides the civil law. They are handy volumes and generally considered reliable. A collection of lectures on the Civil Code by Prof. Eck,[5] of Berlin, enjoys an excellent reputation. The lectures were published in three volumes after the author's death, by Prof. Rudolf Leonhard, of Breslau.

A useful aid in finding a desired section of the Civil Code, published especially for lawyers trained in the earlier law, is the *Handwörterbuch* of Bernhardi.[6] In alphabetical arrangement, it indexes the terms of the Prussian *Allgemeines Landrecht*, the *Badisches Landrecht*, the Saxon Code and the law of the Rhine Provinces, and indicates the corresponding

[1] Kohler, J. Lehrbuch des bürgerlichen rechts. v. I–II. Berlin, Heymann, 1904–1906.

[2] Siméon, P. Recht und rechtsgang im Deutschen Reiche. Berlin, Heymann, 1907–1909. 2 v. New ed., v. 1, 1911.

[3] Engelmann, Arthur. Das bürgerliche recht Deutschlands. . . . 5th ed. Berlin, J. Guttentag, 1909.

[4] Heilfron, Eduard. Das bürgerliche recht des Deutschen reichs. 3rd and 4th ed. Berlin, Speyer & Peters, 1907–1909. 6 v.

[5] Eck, Ernst. Vorträge über das recht des Bürgerlichen gesetzbuchs. 1 and 2 ed. Berlin, J. Guttentag, 1903–4. 3 v.

[6] Bernhardi, Heinrich. Handwörterbuch zum Bürgerlichen gesetzbuche. Berlin, F. Vahlen, 1902. 419 p.

sections in the new Civil Code and in other imperial statutes. A collection of monographs edited by Prof. Leonhard,[1] intended to explain special provisions of the new civil law, began to appear in 1900. Those from Prof. Leonhard's own pen, particularly those dealing with the subject of mistake in law, are of value.

Divisions of the Code

The various divisions of the code have been the subject of individual treatment in a number of important works, to which attention should be called. The general part of the code has had two learned expounders in Prof. Leonhard,[2] of Breslau, and Prof. Andreas Tuhr,[3] of Strassburg. The latter work is a part of the Binding collection; the first of its two volumes has recently been published (1910).

Two extremely important works on the theory of the juristic person or body corporate, which display the highest type of German legal research and reasoning, have been published by Prof. Gierke,[4] the noted Germanist of the University of Berlin. While not based on the present code, they are nevertheless of much value. The modern German theory of the corporation (*Genossenschaftstheorie*) originated with Prof. Beseler. The keen scholarly discussion centering about the legal distinctions between the *universitas* and the *societas*

[1] Leonhard, Dr. Rudolf. Studien zur erläuterung des bürgerlichen rechts. 1900–1910. 32 v. (small) See the interesting review by Prof. Munroe Smith in the Political Science Quarterly, v. 25 (1910), pp. 167–169.

[2] Leonhard, Rudolf. Der allegemeine theil des Bürgerlichen gesetzbuchs in seinem einflusse auf die fortentwickelung der rechtswissenschaft. Berlin, J. Guttentag, 1900. 537 p.

[3] Tuhr, Andreas von. Der allgemeine teil des deutschen bürgerlichen rechts. Leipzig, Duncker & Humblot, 1910. v. 1.

[4] Gierke, Otto F. Das deutsche genossenschaftsrecht. Berlin, Weidmannsche Buchhandlung, 1868–1881. 3 v.

Gierke, Otto F. Die genossenschaftstheorie und die deutsche rechtsprechung . . . Berlin, Weidmannsche buchhandlung, 1887. 1024 p.

excited the admiration of so great a scholar as Prof. Maitland. On the subject of the theory and of the general contents of Prof. Gierke's works in this field, Prof. Maitland has written a learned introduction of 45 pages to his translation of Gierke's *Political theories of the middle age* (*supra*, Introduction), part of the third volume of the larger work now under discussion. Prof. Saleilles [1] of Paris, who has made many critical studies of the German Civil Code, published a volume in 1902 on "Juristic persons in the German Civil Code."

Equitable Trust

The equitable trust, a legal institution of the most profound importance in the development of English law, cannot be found under the head of "trust" in the German Civil Code. Its equivalent in Germany is found in certain provisions of book 2 and book 3 of the Civil Code, as well as in the statutes concerning *Genossenschaften*. It is a most elusive doctrine to locate in all its parts, but its effects were known to Roman lawyers and have not failed of recognition in modern German law. The best treatment of the whole subject, in the nature of a comparison between the English and German equitable trust, is to be found in an extended essay by Maitland, which first appeared in German in Grünhut's *Zeitschrift für das privat und öffentliche recht*, volume 32 (1904–5), pages 1–76, and has been reprinted in English under the title "Trust and corporation" in Volume III of the *Collected papers of Frederic William Maitland* (*supra*), at pages 321–404.

Association and Public Meeting

The rules relating to incorporated associations contained in sections 21 to 79 of the German Civil Code are rules of private law. The restrictions as to the formation of associations and the control exercised over them on grounds of a public nature were, prior to the act of April 19, 1908, regulating the right of association and public meeting, regulated by State law. This

[1] Saleilles, R. Les personnes juridiques dans le Code civil allemand. Paris, Chevalier, 1902. 147 p.

act, therefore, may, from the standpoint of public law, be regarded as supplementary to the above-mentioned sections of the Civil Code. A brief statement of the provisions of the act of 1908 may be found in the Journal of the Society of Comparative Legislation, March, 1911, volume 11, n. s., pages 325–326. An important work dealing with the old law, particularly regarding the association as a juristic person, was published by Dr. Paul Altmann in 1905.[1] The best commentaries on the act of 1908, as affecting the subject, were published by Prof. Fritz Stier-Somlo[2] and Dr. Leo Vossen.[3] The former work is the more scholarly. Both take account of the relevant sections of the Civil Code and the Industrial Code (*Gewerbeordnung*). Vossen's commentary concludes with a dogmatic presentation of the existing law with frequent comparative references to foreign legislation. On the question of unincorporated associations without legal capacity, Prof. Gierke has written a small work entitled *Vereine ohne rechtsfähigkeit.*[4]

Another study of importance by Prof. Saleilles[5] (*De la déclaration de volonté*) covers the effect of a manifestation or expression of will as part of a legal act. A scholarly, yet practical work, by Prof. Danz,[6] of Jena, concerns the interpretation to be given to legal acts and declarations. It is particularly valuable for its discussions of what Gareis (Kocourek's translation) calls "juristic facts." Two works

[1] Altmann, Paul. Handbuch des deutschen vereinsrechtes. Berlin, H. W. Müller, 1905. 311 p.

[2] Stier-Somlo. Reichsvereingesetz von 19. 4. 1908. Stuttgart, 1909. 419 p.

[3] Vossen, Leo. Kommentar u. system des öffentlichen u. privaten reichsvereinigungsrechts. Berlin, W. Rothschild, 1909. 332 p.

[4] Gierke, Otto. Vereine ohne rechtsfähigkeit. 2d ed. Berlin, 1902.

[5] Saleilles, R. De la déclaration de volonté (Code civil allemand). Paris, Pichon, 1901. 423 p.

[6] Danz, Erich. Die auslegung der rechtsgeschäfte. 3d ed. Jena, G. Fischer, 1911. 314 p.

by Prof. Affolter,[1] of Heidelberg, dealing with the application of foreign rules of law, as well as with the general rules of the first part of the Civil Code, also merit attention at this point. As historical and critical works they deserve a prominent place.

Various portions of Book II of the code have been treated in articles in English and should be noticed. One excellent article in particular (22 Harvard Law Review, Jan. 1909, pp. 161–181), by Dr. Walter Neitzel, who spent a year in this country studying American law for the Leske-Löwenfeld work (*supra*, p. 71), deals with "specific performance, injunctions and damages in the German law." An article by Dr. Ernest Schuster on the subject of bailees in German law (Law Quarterly Review, vol. 2, 1886, pp. 188–212) deserves mention. The law of bailments is treated historically in the Roman and Germanic laws and in the modern codes, the Austrian and Swiss codes being drawn upon for purposes of comparison. The law of sales, before the code, is treated in a short article by Moses F. Wilson in the American Law Record, volume 10 (1881), pages 1–6. It is practically a translation from Lehr's *Eléments de droit civil germanic* (Paris, 1875). A small book by the leading authority on commercial law, Staub,[2] on breach of contract and damages exercised great influence both in theory and in practice.

A valuable work, historically, on the law of sales, is that by the late Prof. Bechmann,[3] the last volume of which was written after the author's death by Prof. Oertmann, of

[1] Affolter, Friedrich Xaver. Das intertemporale recht. 1. Bd., 1. 2. Teil. Leipzig, 1902–3, 2 v.

Affolter, F. X. Thatbestand, rechtsverhältnisse u. rechtsordnung, grundlagen eines allgemeinen teiles des privatrechtes. Part I and cont. Berlin, Puttkammer & Mühlbrecht, 1897.

[2] Staub, Hermann. Die positiven vertragsverletzungen u. ihre folgen. Berlin, 1904.

[3] Bechmann, August. Der kauf nach gemeinem recht . . . Erlangen, A. Deichert, 1876–1908. 3 v. in 4.

Erlangen. In three large volumes the law of sales in the "received" Roman law (*Gemeines Recht*) is the subject of a most detailed discussion. The Civil Code has, of course, in many respects revised and amended the common law of sale, and statutes, such as the law of "purchase by installment" (hire-purchase system, *Gesetz betreffend die Abzahlungsgeschäfte*) of May 16, 1894, bear on the question.

A critical discussion of the general theory of the law of contracts or obligations, originally based on the first draft of 1888, is undertaken by Prof. Saleilles,[1] of Paris. A work generally considered of value on the law of obligations is that by Prof. Paul Oertmann,[2] a learned and industrious contributor to German legal periodicals. The last edition of his work appeared in 1910. An historical and critical discussion of the law of agency in the general part of the code and in the law of obligations, as well as in the Commercial Code, is undertaken in a work by Prof. Schlossmann,[3] of Kiel. Two works on the subject of the law of landlord and tenant deserve passing attention here, one by Dr. Mittelstein[4] and the other by Dr. Niendorff.[5] The former is the more scientific.

Land Registry Act

Closely connected with the law of things, covered by Book III of the Civil Code, in which is included the greater part of the real property law of Germany, is the Land Registry Act (*Grundbuchordnung*) of March 24, 1897. In the course of a study on foreign land registry systems, C. Fortescue Brick-

[1] Saleilles, Raymond. Etude sur la théorie générale de l'obligation. 2d ed. Paris, F. Pichon, 1901. 477 p.

[2] Oertmann, Paul. Das recht der schuldverhältnisse. 3d and 4th ed. Berlin, Carl Heymann, 1910.

[3] Schlossmann, Siegmund. Die lehre von der stellvertretung, insbesondere bei obligatorischen verträgen. Leipzig, A. Deichert (G. Böhme) 1900–1902. 2 v.

[4] Mittelstein, M. Die miete nach dem recht des Deutschen Reiches. 2d ed. Berlin, F. Vahlen, 1909. 612 p.

[5] Niendorff, Oskar. Mietrecht nach dem Bürgerlichen gesetzbuch . . . 8th ed. Berlin, C. Duncker, 1907. 405 p.

dale, assistant registrar of the land registry of England, published the result of his investigations in Germany and Austria in an official report and in a number of legal periodicals. The report was prepared from an administrative rather than from a legal standpoint, and was commented on in a number of books and articles. It was incorporated in the Parliamentary Papers (1896 [c. 8139], LXXXIV, 85; 1897 [c. 8139], LXXXVIII, 353). Part of the report appeared in the American Law Review (Volume 31 (1897), pages 827–838, and in the Law Quarterly Review, volume 4 (1888), pages 63–70). A useful analysis and critical commentary on Mr. Brickdale's report was published in pamphlet form by Edmund K. Blyth.[1] It discusses Germany's system of compulsory and universal registry of title and interests in land, with special reference to its applicability in England. A few pages of Morris' work on land registration,[2] pages 103–107, summarize the system prevailing in Germany and Prussia and include bibliographic references. A discussion of the report by John Burns appeared in the Juridical Review, volume 9 (1897), pages 155–160. Dr. Walter Neitzel explains the operation of the present Land Registry Act in the Harvard Law Review, volume 21 (1907–08), pages 485–488.

The most important German work on the subject of land registration, the first volume of which deals with the law of things in the Civil Code, is that by Drs. Turnau [3] and Förster, two supreme court judges. Dr. Oberneck [4] is the author of

[1] Blyth, E. K. The German and Austrian systems of land registry and their application to England. London, Stevens & Sons, 1897. 33 p.

[2] Morris, R. B. A summary of the law of land and mortgage registration in the British Empire and foreign countries. London, Clowes, 1895. 176 p.

[3] Turnau und Förster. Das liegenschaftsrecht nach den deutschen reichsgesetzen und den preussischen ausführungsbestimmungen. 3d ed. Paderborn, F. Schoningh, 1906. 2 v.

[4] Oberneck, Herm. Das reichsgrundbuchrecht. 4th ed. Berlin, C. Heymann, 1909. 2 v.

a prominent work on the Land Registry Act, the fourth edition of which appeared in 1909. Another recent work, the most voluminous commentary on the subject, dealing especially with land registration in Prussia, is that by Dr. G. Güthe (2d ed., 1911).[1] Court decisions in matters of land registration are published officially by the Department of Justice [2] and in some of the court reports mentioned *supra*. The history of the Land Registry Act with complete accounts of the literature on the subject and with all the decisions are published by Schroeder and Albrecht.[3] The seventh volume of the series appeared in 1911.

Eminent Domain

In connection with the law of real property, it may be well to mention two important works on the law of eminent domain, especially as it is in force in Prussia. The matter is governed by the expropriation law (*Gesetz über die Enteignung von Grundeigenthum*) of June 11, 1874, as amended. The leading commentary on the subject, that by Dr. Georg Eger,[4] has recently appeared in a third edition. It is carefully annotated with the decisions of the Prussian and imperial courts. An able treatise on eminent domain was published by Dr. Max Layer [5] as one of a series of monographs under the title *Staats- und völkerrechtliche abhandlungen*. It is partly comparative in its treatment. F. Seydel is the author of one of the more prominent works on the subject. [6]

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[1] Güthe, G. Die grundbuchordnung für das Deutsche Reich. 2d ed. Berlin, F. Vahlen, 1911. 2 v.

[2] Entscheidungen in angelegenheiten der freiwilligen gerichtsbarkeit u. des grundbuchrechts. hrsg. im Reichsjustizamt. 11 v., and index to v. 1–10. Berlin, Puttkammer & Mühlbrecht, 1900–1911.

[3] Grundbuch–Entscheidungen. Die grundbuchfragen der ersten 10 jahre des neuen rechts in rechtsprechung u. zeitschriftenliteratur, von. E. Schroeder u P. Albrecht. Leipzig, Dieterich, 1900–11. v. 1–7.

[4] Eger, Georg. Das gesetz über die enteignung von grundeigenthum. 3d ed. Breslau, Kern, 1910–12. 2 v.

[5] Layer, Max. Principien des enteignungsrechtes. Leipzig, Duncker & Humblot, 1902. 660 p.

[6] Seydel, F. Das gesetz über die enteignung von grundeigentum. 4th ed. Berlin, Heymann, 1911. 348 p.

A study on possession in law, which from Savigny's [1] celebrated tract in 1803 to Jhering's last days, was a favorite subject for theoretical discussion by German legal scholars, was published in 1888 by Prof. Strohal,[2] the learned jurist of Leipzig. Most of the English works on jurisprudence have given attention to the German theories of possession.

Book IV of the German Civil Code, dealing with family law, has also been the subject of a great many special studies. A reliable summary of the provisions of German law relating to marriage and divorce will be found in Renton and Phillimore *The comparative law of marriage and divorce* (London, Sweet & Maxwell, 1910) which constitutes Volume III of Burge's new edition of the *Commentaries on colonial and foreign laws.* While the German law is scattered through the work under the various subdivisions of the law of marriage and divorce, the whole body of the law of Germany is indexed under Germany, so that there is little difficulty in locating a desired provision. Attention is also given to the rules of the Hague conferences on marriage and divorce, which to a large extent affect German law. One chapter of Ringrose's *Marriage and divorce laws of the world* (London, N. Y., 1911) is devoted to Germany. The provisions of the Civil Code relating to marriage and of the law of Personal Status and recording of marriages of February 6, 1875, as amended May 20, 1898, including a summary of the special provisions of the Federal States relating to the marriage of foreigners, are printed at pages 92–108 of an official publication of the British Government, entitled *Laws relating to marriage in force in certain foreign countries*, presented to Parliament December 1911, (Misc. No. 11 [1911], Cd. 5995). The question of divorce has recently been treated in an article by Dr. Schuster,

[1] Savigny's von. Treatise on possession, 6th edition; translated from the German by Sir Erskine Perry. London, S. Sweet, 1848. 432 p.

[2] Strohal, E. Der sachbesitz nach dem B. G. B. Jena, Fischer, 1888. 137 p.

entitled "History and present condition of the German divorce law" (Journal of the Society of Comparative Legislation, vol. 10, April, 1910, pp. 229–238). A summary of the important provisions of German divorce law is printed in the Law Times, vol. 130 (Feb. 11, 1911), pages 364–365.

Prof. Opet of Kiel, cooperating with Prof. Blume, of Königsberg, published an important commentary on family law in the code.[1] The German law of marriage and divorce, as affected by the Hague conference of June 12, 1902, was treated in a work by Dr. Karl Sauer[2] published in 1909.

Personal Status Registration

Marriage, and especially its registration and authentication, is still largely governed by the law of personal status (*Personenstandsgesetz*) of February 6, 1875. This law also includes provisions concerning the registration of births and deaths and other requirements of form, jurisdiction over which matters were by that statute transferred to the civil authorities. The best work on the subject of this law of 1875, also covering the provisions of the Civil Code, is that by the late Prof. Hinschius[3] (the celebrated authority on canon law), the fourth edition of which, edited by W. Boschau, appeared in 1909. Account is taken of the provisions of the Introductory Act so far as they relate to the private international law of marriage and divorce. The Hague conferences are noticed and the Noncontentious Jurisdiction Act receives attention. The author also reprints the laws of the different States (*Ausführungsgesetze*), carrying out in detail the general provisions of the imperial law. Two good commentaries on the Personal Status Law are those by

[1] Opet, Otto u W. von. Blume. Das familienrecht des Bürgerlichen gesetzbuchs. Berlin, C. Heymann's verlag, 1904–1906. 2 v.

[2] Sauer, Karl. Das deutsche eheschliessungs- und ehescheidungsrecht. München und Berlin, J. Schweitzer (A. Sellier) 1909. 778 p.

[3] Boschau, Wilhelm. Das reichsgesetz über die beurkundung des personenstandes und die eheschliessung vom 6. februar 1875. Begründet von dr. Paul Hinschius. 4th ed. Berlin, J. Guttentag, 1909. 654 p.

Sartorius[1] (Munich, 1902), and Stölzel[2] (Berlin, 1904). This law of registration of births, marriages, deaths, etc., is of great importance to the administrative officer in charge of registration. A work dealing with the law from the point of view of administration is published by Erichsen and Weisse;[3] it has already appeared in ten editions.

A work dealing with the law of guardianship, especially the placing of irresponsible persons under guardianship, written from the standpoint of private international law as it affects Germany, is that by Dr. Otto Levis.[4] German legislation and procedure, and the Hague convention of July 17, 1905, are fully discussed. The guardianship of minors is treated in a work by Schroeder and Mugdan.[5]

Book V on the law of inheritance and the administration of decedents' estates, has been the subject of some noteworthy treatises, the principal one of which is that by Prof. Strohal,[6] of Leipzig, in two volumes. Prof. Julius Binder,[7] of Erlangen, has published a study in three volumes on the legal position of the heir in the German Civil Code. The administration of estates has been treated in a popular volume by Dr. Gustav Märker, the[8] seventeenth edition of which was edited by

[1] Sartorius, C. Kommentar zum Personenstandsgesetz. München, Beck, 1902. 548 p.

[2] Stölzel, O. Das personenstandsgesetz vom 6. II. 1875. Berlin, O. Häring, 1904. 306 p.

[3] Erichsen, A. v., u Otto Weisse: Die führung der standesregister. Praktische anleitg. f. standesbeamte. 10., vollständig neu bearb. aufl. v. Karl Sauer. Berlin, E. Grosser, 1911. 664 p.

[4] Levis, Otto. Das internationale entmündigungsrecht des Deutschen Reiches. Leipzig, C. L. Hirschfeld, 1906. 314 p.

[5] Schroeder und Mugdan. Das deutsche vormundschaftsrecht. Berlin, R. v. Decker, 1900. 690 p.

[6] Strohal, Emil. Das deutsche erbrecht auf grundlage des Bürgerlichen gesetzbuchs. 3d ed. Berlin, J. Guttentag, 1903–4. 2 v.

[7] Binder, J. Die rechtsstellung der erben nach dem B. G. B. Leipzig, A. Deichert, 1901–1905. 3 v.

[8] Märker, Gustav. Die nachlassbehandlung. 17th ed. bearb. v. P. Köhne u. R. Feist. Berlin, R. & Decker, 1902. 690 p.

Köhne and Feist in 1902. It deals especially with Prussian law. A practical book of reference is that by Dr. G. Eichhorn,[1] judge of the court of appeal, the fifth edition of which, edited by Dr. Ernest Goldmann, of Berlin, was published in 1910. It was originally written from the standpoint of the Prussian *Landrecht*, but the later editions apply to the Civil Code. In the administration of estates and in a number of other details of the law of inheritance, considerable jurisdiction has been left to the States of the Empire. This volume deals especially with the supplementary legislation and conditions in Prussia. It treats the subject from the point of view of the written will, from its first draft until final probate. There is an appendix of forms. A work which enjoyed great popularity some years ago and which is still of considerable value on the subject is that by Dr. Ferdinand Böhm,[2] the founder and first editor of Niemeyer's *Zeitschrift für internationales recht*. It deals with the administration of estates in the principal countries of the world, and gives a detailed account of the laws of Germany and the German States, with references to the modifying effect of treaties.

Inheritance Taxes

Prior to the act of July 3, 1906 inheritance-taxes were imposed by each of the separate States of the German Empire. By the Imperial Financial Act of that date, a general or Federal inheritance tax law was enacted which, while it superseded the earlier laws, nevertheless allotted to the separate States a part of the proceeds and allowed them the privilege of levying certain additional or supplemental inheritance taxes on their own account. A concise analysis of the German act of 1906 is printed in English in a compilation prepared by the Solicitor of the Department of Commerce and Labor in 1909 under the

[1] Eichhorn, G. Das testament. Hand- und musterbuch für verfügungen von todes wegen nach dem B. G. B. 5th ed. by Ernest Goldmann. Berlin, Franz Vahlen, 1910.

[2] Böhm, Ferdinand. Handbuch der internationalen nachlassbehandlung. Augsburg, Gebr. Reichel, 1881–1885. 2 v.

title of "Inheritance-Tax Laws." [1] At pages 32–41 there is a discussion of the form of the tax, the property taxed, exemptions, valuation of property, how the tax is graduated, how levied, and the distribution of proceeds. A leading work on the inheritance tax law is the commentary of Ulrich Hoffmann [2] (2d ed., 1911).

We should not omit to mention some important periodicals which deal largely with German civil law. A very important publication is the *Jahrbuch des deutschen rechtes*,[3] edited by Dr. Hugo Neumann and Dr. Th. Olshausen, with the cooperation of many other lawyers. In an annual volume, the periodical literature and decisions of the year are arranged under the articles of the code or statute which they construe. The publication began in 1903, and an index covering the first seven volumes appeared in 1909. An important periodical is the *Archiv für bürgerliches recht*,[4] edited by Profs. Kohler and Oertmann and Dr. Ring. It continued Busch's *Archiv des allgemeinen deutschen handels- und wechselrechts*. Its annual bibliographies by Dr. Maas are valuable. An old established periodical is known under the popular name of *Gruchot's Beiträge*.[5] It was founded in 1857 and appears bimonthly. It is now edited by Rassow, Küntzel, and Eccius. Another well-known periodical is that edited by F. Detken and A. Finger, published in Erlangen under the title *Der Gerichtssaal*.[6] It

[1] Digest of the principal features of the laws of Great Britain, France, and Germany, together with an outline of inheritance taxation in the United States and a collection of judicial decisions relating thereto. Washington, Government Printing Office, 1907.

[2] Hoffmann, Ulrich. Das erbschaftssteuergesetz für das Deutsche Reich von 3. Juli 1906. 2d ed. Berlin, Guttentag, 1911.

[3] Jahrbuch des deutschen rechtes. hrsg. von Dr. Hugo Neumann. 1–8 jahrg. and cont.; 1903–1910. Berlin, F. Vahlen, 1904–1911. 8 v. Index, vols. 1–7.

[4] Archiv. für bürgerliches recht . . . Berlin, C. Heymann, 1889–1910. v. 1–35 and cont.

[5] Beiträge zür erlaüterung des deutschen rechts . . . 1857–1910. Hamm, G. Grote, 1857–1910. v. 1–54 and cont.

[6] Gerichtssaal, Der. Stuttgart, F. Enke, 1849–1910. v. 1–76 and cont.

was founded in 1859, and discusses questions on all branches of law. The *Deutsche juristen-zeitung*,[1] founded by Profs. Laband and Staub, and now edited by Prof. Laband and Judges Hamm and Heinitz, enjoys a sterling reputation. It was founded in 1896. The *Juristische wochenschrift*,[2] founded in 1872, edited by Hugo Neumann, is the organ of the German Bar Association. It is very popular among practicing lawyers. *Das recht*, a periodical edited by J. Soergel in Hannover, is published fortnightly; the reporting of the most recent decisions is its principal feature. The *Zeitschrift für deutsches bürgerliches recht und französisches zivilrecht*,[3] which was founded in 1870, originally laid considerable emphasis on French civil law and still bears this indication in its title. It contains critical discussions of decisions and excellent articles. Its present editors are Drs. Heinsheimer, Hüber, and Diefenbach. A scholarly journal, founded in 1887, is known under the popular name of "*Jhering's Jahrbücher*."[4] Its editors have always been leading jurists, the present editorial staff consisting of Profs. Strohal and Ehrenberg. The renowned Rudolph von Jhering was its editor in chief until his death in 1892.

LITERARY AND INDUSTRIAL PROPERTY.

A subject usually treated in works on civil law and yet dealt with in separate statutes, is that body of legal rights known in Germany under the head "*Immaterial Rechte*," i. e., rights

[1] Deutsche juristen-zeitung. Berlin, Otto Liebmann, 1896–1910. v. 1–15 and cont.

[2] Juristische wochenschrift . . . Organ des Deutschen anwalt-vereins. Berlin, W. Moeser, 1872–1910. v. 1–39 and cont.

[3] Zeitschrift für deutsches bürgerliches recht und französisches civilrecht. 1870–1907. Mannheim, J. Bensheimer, 1870–1907. 38 v. and cont.

[4] Jherings jahrbücher für die dogmatik des bürgerlichen rechts . . . 1857–1910. Jena, F. Mauke, (etc.) 1857–77; G. Fischer, 1878— v. 1–58 and cont.

in immaterial things or the incorporeal property rights growing out of products of the human mind and protected by copyright, patent and trademark.

Copyright

Copyright of literary, dramatic and musical compositions is governed by the act of June 19, 1901 (*Reichsgesetz betreffend das Urheberrecht an Werken der Literatur und der Tonkunst*), as is also, in a statute passed the same day, the cognate subject of the relative rights of author and publisher (*Verlagsrecht*). An English translation of these two statutes [1] was published in 1902 by Messrs. Longmans, Green & Co. The acts of June 19, 1901 are briefly analyzed in Copinger's *Law of copyright* (London, Stevens & Haynes) fourth edition, 1904, pages 576–581.

The learned Prof. Kohler has occupied himself largely with the subject of "immaterial rights" and has published works on various branches of the general subject. His contribution to the sixth volume of Dernburg's *Bürgerliches recht* on the law of copyright, has already been mentioned (*supra*, p. 76). An independent work from his pen was published in 1907.[2] Privy Councillor Paul Daude [3] has recently published a book dealing with the copyright and publisher's law of 1901, which is especially useful to the practitioner. A general work on the law of copyright in Germany, dealing also with its international aspect, is that by Dr. Ernest Müller,[4] the second vol-

[1] The law of copyright in Germany: being an English translation of I, The German act of June 19, 1901, relating to copyright in literary and musical works; II, the German act of June 19, 1901, relating to right of publication. London, New York, Longmans, Green & Co., 1902. 39 p.

[2] Kohler, J. Urheberrecht an schriftwerken und verlagsrecht. Stuttgart, Enke, 1906–7. 515 p.

[3] Daude, Paul. Die reichsgesetze über das urheberrecht an werken der literatur und der tonkunst und das verlagsrecht vom 19. Juni 1901. Berlin, J. Guttentag, 1910. 293 p.

[4] Müller, Ernst. Das deutsche urheber- und verlagsrecht. München, J. Schweitzer, 1901–07. 2 v.

ume of which was published in 1907. Prof. Riezler [1] is the author of a systematic work on the subject; he includes patent law in his treatment. The copyright treaties of Germany are printed in a work by Prof. Ernst Röthlisberger [2] of Munich.

The act of January 9, 1907, which repealed the act of 1876, governs the copyright of a production belonging to one of the formative arts, including paintings, drawings, sculpture, etc., and for the copyright of photographs (*Gesetz betreffend Urheberrecht an Werken der bildenden Künste u. der Photographie*). Prof. Phillip Allfeld [3] of Erlangen, who has made a specialty of the subject of copyright, published in 1908 a small convenient commentary dealing with the law of January 9, 1907, just mentioned; he reprints the German treaties and the last Berne convention of November 13, 1908. Prof. Kohler [4] also published a work on the subject in 1908.

The German law of newspapers, so far as relates to their publication, their rights and responsibility, etc., is the subject of a four volume work by Albert Ebner [5] entitled *Das deutsche zeitungsrecht*, volume 2 of which deals in particular with the German press law.

The law concerning the protection of industrial property is found in several statutes, the Patent Act (*Patentgesetz*) of April 7, 1891, the Useful Models Act (*Gebrauchsmuster-Gesetz*) of June 1, 1891, the Act for the Protection of Trademarks (*Gesetz zum Schutze der Warenbezeichnungen*) of May 12, 1894, and the very important Act for the Prevention of Unfair

[1] Riezler, Erwin. Deutsches urheber u. erfinderrecht. Systematische darstellung. München, Schweitzer, 1909. 494 p.

[2] Röthlisberger, Ernst. Die sonder-literaturverträge des Deutschen Reiches ausgelegt. Bern, A. Francke, 1909. 135 p.

[3] Allfeld, Philip. Kommentar zu dem Gesetze, betreffend das urheberrecht an werken der bildenden künste u. der photographie vom 9 Januar 1907. München, Beck, 1908. 318, 22 p.

[4] Kohler, J. Kunstwerkrecht. Stuttgart, Enke, 1908. 191 p.

[5] Ebner, Albert. Das deutsche pressrecht. Hanover, M. Jänecke, 1909. 167 p.

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Competition (*Gesetz zur Bekämpfung des unlauteren Wettbewerbs*).

Patents

The Patent Act (*Patentgesetz*) of April 7, 1891, which protects the rights of inventors, amended the original act of May 25, 1877. English translations and discussions of the act may be found in various sources. The act is translated in a small work by Selmar Reitzenbaum,[1] which also includes important German decisions under the Patent Act. In the English edition of the important series edited by Prof. Kohler[2] and Maximillian Mintz, *The patent laws of all nations*, the patent laws of Germany are systematically presented (Vol. 2, pt. 2). In a work by Singer[3] on the *Patent and trade-mark laws of the world*, pages 166 to 176 are devoted to an analysis of the provisions of the German Patent Act. A recent work by Wallace Fairweather[4] on *Foreign and colonial patent law* gives in concise form (pp. 178–186) the principal provisions of German patent legislation. The treaty[5] governing patents, between the United States and Germany, which was signed on February 23, 1909, and proclaimed, August, 1909, may be obtained as a separate pamphlet. American inventors desiring a patent in Germany are governed by the provisions of that treaty, which is supplementary to German legislation.

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[1] Reitzenbaum, Selmar. Important decisions regarding the working of German patents, as well as literal translations of the German patent law, of the act for the protection of gebrauchsmuster (German utility model patent), and of the German law for the protection of trade marks, together with German technical phraseology (in parentheses) of German patent rule and practice; by patentanwalt Selmar Reitzenbaum . . . 2d ed. London, Asher & Co., 1909. 48 p.

[2] Kohler u. Mintz. Die patentgesetze aller völker (The patent laws of all nations). Berlin, Decker, 1907.

[3] Singer, B. Patent and trade mark laws of the world. Chicago, 1911.

[4] Fairweather, Wallace C. Foreign and colonial patent law. London, Constable, 1910.

[5] United States. Convention between the United States and Germany. Patents . . . Washington, Govt. Print. Off., 1909. 5 p.

The most important German work on patent law is the voluminous *Handbuch* of Prof. Kohler[1] published in 1901, an index to which appeared in 1904. In 1910 the same author published a compact treatise[2] on the subject, which is philosophical and historical and yet practical. A large commentary, much used by practitioners, is Kent's *Kommentar*.[3]

Useful Models

The law for the protection of useful models (*Gesetz betreffend den Schutz von Gebrauchsmuster*) of June 1, 1891, is often treated of in connection with the Patent Act. The Useful Models Act is translated into English in the small work of Reitzenbaum, *supra*. The most recent work on the subject, by Hermann Isay,[4] covering both acts (2d ed., 1911), has been very favorably reviewed. Dr. Arnold Seligsohn,[5] an authority on the subject, has likewise treated both acts in one volume. The fourth edition of his work was published in 1909. It contains a history of both acts, with an exhaustive commentary. Prof. Kohler[6] has made a small but valuable contribution to the literature of the law for the protection of useful models in a work published in 1909. It is a scientific treatise and not a commentary. A recent work on the subject, by Otto Cantor,[7] the largest commentary on the law, has gathered all the deci-

[1] Kohler, J. Handbuch des deutschen patentrechts (971 p.) Sach u. schlagwortverzeichnis by Rathenan (45 p.) Mannheim, Bensheimer, 1901–4.

[2] Kohler, Josef. Lehrbuch des patentrechts. Mannheim, Bensheimer, 1908. 264 p.

[3] Kent, P. Das Patentgesetz vom 7 IV. 1891. Kommentar. Berlin, Heymann, 1906–7. 2v.

[4] Isay, Herm. Patentgesetz u. gesetz, betr. den schutz von gebrauchsmustern. Systematisch erläutert. 2d ed. Berlin, F. Vahlen, 1911. 584 p.

[5] Seligsohn, Arnold. Patentgesetz und gesetz, betreffend den schutz von gebrauchsmustern. 4th ed. Berlin, J. Guttentag, 1909. 580 p.

[6] Kohler, J. Musterrecht. Geschmacks- u. gebrauchsmusterrecht. Stuttgart, F. Enke, 1909. 165 p.

[7] Cantor, Otto. Gesetz betr. den schutz von gebrauchsmustern. Berlin, F. Siemenroth, 1911. 1365 p.

sions governing the different sections of the act, together with such decisions as are relevant to the like provisions of the Patent Act.

A valuable collection of patent decisions [1] was begun in 1881 under the editorship of Prof. Gareis of Munich. In recent years the collection has been edited with the cooperation of Prof. Osterrieth. The sixth volume of the new series (sixteenth of the whole series) edited by Julius Magnus, was published in 1911. The collection includes the decisions on the protection of patents, useful models and trademarks.

Trademarks

The law for the protection of trademarks (*Gesetz zum Schutze der Warenbezeichnungen*) of May 12, 1894, was translated into English in the book of Reitzenbaum, *supra*. The most important provisions of the act are mentioned at pages 176–180 of Singer's book, *supra*. There are two leading works on the subject. One is by Dr. C. Finger,[2] judge of the court of appeal in Calmar, the able expounder of the law of unfair competition, and the other by Prof. Kohler.[3] Both are second editions, the one by Finger appearing in 1906, and the work by Kohler in 1910.

Unfair Competition

The term "unfair competition" has made its appearance in American law only within the last fifteen or twenty years. An article by Oliver R. Mitchell in Volume 10 of the Harvard Law Review (January, 1897), pages 275–98, discusses the American cases on the subject. The term includes all the methods used to appropriate or destroy the good will of another's business by methods of deception. The Germans have long

[1] Gareis, Karl. Die patentamtlichen und gerichtlichen entscheidungen in patentsachen, hrsg. von Dr. Karl Gareis . . . Berlin, C. Heymann, 1881–1906. 15 v. v. 16, edited by Julius Magnus, 1911.

[2] Finger, C. Das reichsgesetz zum schutz der warenbezeichnungen, vom. 12 v. 1894. 2d ed. Berlin, F. Vahlen, 1906. 606 p.

[3] Kohler, J. Warenzeichenrecht. Zugleich 2 auf. des rechts des markenschutzes m. berücksichtigung ausländischer gesetzgebung. München, Bensheimer, 1910. 272 p.

recognized this serious danger of modern commercialism and their act of May 27, 1896, for the suppression of unfair competition (*Bekämpfung des unlauteren Wettbewerbs*) contains stringent enactments against all forms of commercial deception. This law, together with the Trademark Act of May 12, 1894, has the double purpose of preventing imposition upon the public and protecting private business interests. It prevents all kinds of improper advertising and false assertions with respect to one's own goods. Germany was the first country to legislate against this source of public injury and unfortunately has as yet been followed by very few countries. In England and America we treat the direct attacks on a competitor's goods or credit as libel or slander of title. In Germany this law of Unfair Competition deals fully with the matter. The act of May 27, 1896, as amended June 7, 1909, deals with (*a*) false assertions as to one's own goods, (*b*) false weights, measures and quantities of goods, (*c*) slander of credit of a person or his goods, (*d*) privileged communications, (*e*) trade names, (*f*) business or trade secrets, (*g*) procedure. J. F. Iselin in the Law Quarterly Review, volume 13 (1897), pages 156–164, published a useful analysis of the act of May 27, 1896. The amending act of 1909, which is very important, is briefly described in the March, 1911, number (pp. 327-28) of the Journal of the Society of Comparative Legislation.

The leading work on the subject is that by Christian Finger [1] referred to above, the fourth edition of which appeared in 1911. Another work, more voluminous, but somewhat less useful, is that by Judge Adolf Lobe.[2] It is to be in four volumes, the second of which has not yet been published. It has the disadvantage of not taking into account the pro-

[1] Finger, Ch. Reichsgesetz gegen den unlauteren wettbewerb von 7 Juni 1909. 4th ed. Berlin, Vahlen, 1911.

[2] Lobe, Adolf. Die bekämpfung des unlauteren wettbewerbs. Leipzig, Weich, 1907. 4 v. (of which v. 2 not yet published.)

visions of the new law of June 7, 1909. Two recent smaller commentaries on the subject will be found useful—the one by Ludwig Fuld,[1] the other by Dr. Weiss.[2] The British Blue Book, Cd. 5531, contains the foreign laws in force to prevent the sale or importation of goods bearing a false indication of origin. The food inspection laws for the protection of the public against impurities, are the subject of a work by Lebbin[3] and Baum, a chemist and lawyer respectively, of Berlin. The food laws and legislation of Germany are collected in a volume recently published (1912) by K. v. Buchka.[4] The Imperial German Meat Inspection Law of June 3, 1900, was translated into English in a small pamphlet in 1904.[5]

General works on the protection of industrial property were published by Prof. Osterrieth[6] and Prof. Allfeld.[7] Osterrieth's *Lehrbuch* is a standard work. Allfeld's is simply an outline presenting the law of patents, useful models, trademarks and unfair competition, without annotations. A collection of articles by German lawyers on this subject was published in 1909 as a "*Festgabe*" or "jubilee volume," on

[1] Fuld, Ludwig. Kommentar zum reichsgesetz gegen den unlauteren wettbewerb von 7 Juni 1909. 3d ed. Hannover, Helwing, 1909. 653 p.

[2] Weiss, Chr. Gesetz gegen den unlauteren wettbewerb von 7 Juni 1909. 2d ed. München, Schweitzer, 1910. 404 p.

[3] Lebbin, G. and Baum, G. Deutsches nahrungsmittelrecht. Berlin, 1907. 2 v.

[4] Buchka, K. v. Die Nahrungsmittelgesetzgebung im Deutschen Reiche. Eine sammlg. der gesetze u. wichtigsten verordngn., betr. den verkehr m. nahrungsmitteln, genussmitteln u. gebrauchsgegenständen, nebst den amtl. anweisgn. zu ihrer chem. untersuchg. 2. aufl. Berlin, J. Springer, 1912. 294 p.

[5] The imperial German meat inspection law. An act concerning the inspection of slaughtered cattle and of meat, June 3, 1900. (n. p. 1904).

[6] Osterrieth, A. Lehrbuch des gewerblichen rechtsschutzes. Leipzig, Deichert, 1908. 544 p.

[7] Allfeld, Philipp. Grundriss des gewerblichen rechtsschutzes. Leipzig, G. A. Glochnor, 1910. 220 p.

the occasion of Prof. Kohler's sixtieth birthday. The collection bears the title *Studien zur förderung des gewerblichen rechtsschutzes*.[1]

Several periodicals on industrial property are important enough to warrant mention. The *Zeitschrift für industrierecht*,[2] published at Berlin, is now in its sixth year. The periodical *Zeitschrift für gewerblichen rechtsschutz*,[3] edited by P. Schmidt, is continued by the *Gewerblicher rechtsschutz und urheberrecht* published at Berlin, now in its sixteenth year. An annual volume published at Berlin by the International Association for the Protection of Industrial Property is important.[4]

COMMERCIAL LAW

COMMERCIAL CODE.

History

The necessity for uniformity in the field of commercial law became apparent when Germany was still in the throes of political discord. The Bills of Exchange Act of 1849 and the Commercial Code of 1861 were the first important products of codification in modern Germany. In 1866 this code was adopted in all the German States and later became the law of the Empire. When the Civil Code was enacted in 1896 many rules which had previously been applicable to commercial transactions were embodied in the Civil Code, and it became necessary to recast the Commercial Code. Numerous statutes,

[1] Studien zur förderung des gewerblichen rechtsschutzes. Josef Kohler als Festgabe zum 60. geburtstage zugeeignet von deutschen praktikern. Berlin, Heymann, 1909. 507 p.

[2] Zeitschrift für industrierecht, Hrg. v. B. Tolksdorf, Dr. Julius Ephraim, u Dr. Paul Alexander-Katz. Berlin, Issleib, 1906 and cont.

[3] Zeitschrift für gewerblichen rechtsschutz. Hrsg. v. P. Schmidt. München, Oldenburg, 1892–95. Continued under title Gewerblicher rechtsschutz und urheberrecht. Hrsg. v. A. Osterrieth. Berlin, Heymann, 1896 and cont

[4] Jahrbuch der internationalen vereinigung für gewerblichen rechtsschutz. Berlin, Heymann, 1897 and cont.

such as the Stock Corporation Act of 1884, had, moreover, modified important provisions of the 1861 code. The Commercial Code now in force was enacted May 10, 1897, and went into effect January 1, 1900. Dr. Emil Kaufmann [1] explains the differences between the old and the new codes in a book published in 1900. The German Commercial Code (together with a number of statutes dealing with specific matters) supplements the Civil Code and in some respects modifies its provisions in so far as they apply to certain classes of transactions.

Contents

The Commercial Code contains the rules relating to mercantile traders, mercantile associations and commercial transactions only in so far as they differ from the general rules. It is therefore necessary in every case to ascertain the general rule as well as that laid down in the Commercial Code. Thus, as Dr. Schuster points out, the law relating to mercantile unlimited partnerships, in so far as it does not differ from the general partnership law, has to be looked for in sections 705–740 of the Civil Code and the law relating to mercantile sale of goods, in so far as it does not differ from the general law, has to be looked for in sections 433–458 of the Civil Code. Again, the provisions in the Commercial Code relating to the form of agreements, suretyship, interest, title to goods, instruments to bearer, pledge and lien, etc. are only supplemental to the various rules on these subjects contained in the Civil Code.

The Commercial Code is divided into four books. Book I is entitled: Commerce in general; Book II, Trading companies and dormant partnerships; Book III, Commercial transactions; and Book IV, Maritime commerce.

Book I is divided into eight sections, which deal with the following subjects: mercantile traders, the mercantile register,

[1] Kaufmann, Emil. Die wesentlichen unterschiede des alten und neuen handelsgesetzbuchs . . . Berlin, W. Moeser, 1900. 204 p.

firm names, mercantile books of account, power of procuration and agency, mercantile clerks and apprentices, agents and brokers.

Book II is divided into five sections. The first deals with unlimited partnership. In this section are discussed the formation of the partnership, the mutual rights and liabilities of the partners, the legal position of the partners in relation to third parties, the dissolution of the partnership and the retirement of partners, liquidation and the balancing of accounts on dissolution, and prescription.

Section 2 is concerned with the limited partnership or commandite association.

Section 3 deals with the stock company and includes among other matters the legal relationship of the company and its shareholders, its internal organization and management, its dissolution, and penal provisions.

Section 4 deals with the commandite stock company; and section 5 with the dormant partnership.

Book III, which deals with commercial transactions, is divided into seven sections. The first contains general provisions; the second covers mercantile purchase and sale; the third, commission business and agency; the fourth, forwarding agency; the fifth, warehousing; the sixth, the business of carriers by land; and the seventh, the carriage of goods and persons by rail.

Maritime commerce is dealt with in Book IV of the Commercial Code (*infra*).

General Literature

The literature on commercial law is presented by title only, but very exhaustively, by Prof. Karl Lehmann of Rostock in the introduction to his work on the commercial law of Germany in the great series *Handelsgesetze des erdballs*, the whole of which is soon to appear in an English edition. Alfred F. Schuster, a son of Dr. Ernest J. Schuster, has recently trans-

lated the Commercial Code into English.[1] From all points of view, faithfulness of translation, style, annotations and references to related codes and statutes, it is a much superior work to Platt's English translation of the Commercial Code,[2] published in 1900. Dr. E. Schuster has written an introduction to his son's book. A useful reference work dealing with the entire commercial legislation of Germany is the one edited by the late Prof. Emil Friedberg,[3] of Leipzig, the ninth edition of which was published in 1908. In the form of a text with notes it covers the code, all commercial law contained in the procedural codes, the Penal Code, the Bankruptcy Act, and the Industrial Code, all financial laws concerning banking and taxation of various kinds, the law of patents, copyright, bills of exchange, and checques, and in fact the law covering practically every subject which in the remotest way partakes of the nature of a commercial transaction, together with the laws of the States of the Empire carrying out and into effect such sections and portions of commercial law as were left within their jurisdiction. A good translation into French of the commercial legislation of Germany was edited by Paul Carpentier,[4] published in 1901. There are translated in it the Commercial Code, the Bills of Exchange Act as promulgated by the North German Federation on June 5, 1869 (the new Bills of Exchange Act of June 3, 1908, is, of course, not included), and the Bankruptcy Act of February 12, 1877, as amended May 17, 1898, together with minor laws of a commercial character.

[1] Germany. The German Commercial code, tr. and briefly annotated by A. F. Schuster, with an introduction by E. J. Schuster . . . London, Stevens & Sons, 1911. 280 p.

[2] Germany. The commercial code for the German Empire. Tr. from the official text by Bernard A. Platt . . . London, Chapman & Hall, 1900. 370 p.

[3] Friedberg, Emil. Die handelsgesetzgebung des Deutschen Reiches. 9th ed. Leipzig, Veit & Comp., 1908. 1134 p.

[4] Carpentier, Paul. Legislation commerciale de l'Allemange. Code de commerce mis en vigueur en 1900; loi sur le change; loi sur la faillite; texte, annotations, jurisprudence, droit comparé . . . Paris, A. Chevalier-Marescq, 1901. 579 p.

There are a great many texts and small annotated editions of the code. That in the *Guttentag'sche Sammlung* is as good as any.

There are a number of important commentaries on the Commercial Code, the best known of which is that by Staub,[1] known all over the Empire as *Staub's Kommentar;* the ninth edition, edited by Könige, Pinner, and Bondi, will be completed before the end of 1912. Book IV, on maritime law, is omitted. Another commentary in high repute among German lawyers is that by Düringer and Hachenburg [2] which likewise omits maritime law. It does, however, take full account of such commercial transactions as have been partly dealt with in the Civil Code; for example, sale, work and delivery, etc. A second edition began to appear in 1908 and is expected to be completed in 1912. Makower [3] is the author of another extensive commentary in three volumes, the thirteenth edition of which began publication in 1908.

Several learned treatises on commercial law have made their appearance, the most celebrated of which, although not the most practical at the present time, is that by Prof. L. Goldschmidt, founder of the well-known periodical, *Zeitschrift für das gesammte handelsrecht.* His *Handbuch des handelsrechts* [4] (pt. 1, 3d ed., 1891; pt. 2, 2d ed., 1883) treats of the history of commercial law, its basic principles and the subject matter of commerce and money. Barring Huvelin's French

[1] Staub, Hermann. Staub's Kommentar zum handelsgesetzguch. 9th ed., bearb. unter benützung des handschriftlichen nachlasses von Heinrich Könige . . . F. Bondi . . . Albert Pinner . . . Berlin, J. Guttentag, 1912. Complete in 2 v.

[2] Düringer, A. Das Handelsgesetzbuch vom 10. mai 1897 (mit ausschluss des seerechts), erlaütert von Dr. A. Düringer . . . . u Dr. M. Hachenburg . . . 2d edition. Mannheim, J. Bensheimer, 1908–1912. 3 v.

[3] Makower, H. Handelsgesetzbuch mit kommentar, hrsg. von H. Makower . . . und F. Makower . . . 13th ed. Berlin, J. Guttentag, 1908. 3 v. in 4.

[4] Goldschmidt, L. Handbuch des handelsrechts. Pt. I, 3d ed. Stuttgart, Enke, 1891; Pt. II, 2d ed. 1883.

treatise, it is probably the leading work on the history of commercial law (*Universalgeschichte des Handelsrechts*). Goldschmidt's *System des handelsrechts*,[1] the fourth edition of which appeared in 1892, is also important, although based on the old code. The best treatise on modern commercial law is generally considered to be that of Prof. Konrad Cosack [2] of Bonn University. The seventh edition was issued in 1909–10. A French translation of this work (from the sixth edition) was undertaken by the enterprising firm of Giard & Brière,[3] to whom the French nation is indebted for translations of many excellent treatises. The translation appears in three volumes. Prof. Karl Lehmann,[4] of Rostock, is the author of a brilliant treatise on commercial law (2d ed., 1911). It was founded originally on lectures and is written from an historical and economic standpoint; it is constructive in character. Maritime law, the law of bills of exchange, and other forms of negotiable paper, and the law of private insurance, are included. A somewhat earlier treatise, of scholarly value, is that by Behrend,[5] the second edition of which appeared in two volumes in 1896. A short textbook on commercial law, including bills of exchange and maritime law, by Prof. Karl Gareis,[6] was published in its eighth edition in 1909.

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[1] Goldschmidt, L. System des handelsrechts. 4th ed. Stuttgart, Enke, 1891. 293 p.

[2] Cosack, Konrad. Lehrbuch des handelsrechts . . . 7th ed. Stuttgart, F. Enke, 1909–10. 780 p.

[3] Cosack, K. Traité de droit commercial, tr. sur la 6. ed. allemande (1903) Par Leon Mis. . . . Preface de M. Ed. Thaller. Paris, V. Giard & E. Brière, 1904–1907. 3 v.

[4] Lehmann, Karl. Lehrbuch des handelsrechts. 2d edition. Leipzig, Veit & Comp., 1911. 1122 p.

[5] Behrend, J. Fr. Lehrbuch des handelsrechts. 2d ed. Berlin, Guttentag, 1896. 2 v.

[6] Gareis, Karl. Das deutsche handelsrecht. 8th ed. Berlin, J. Guttentag, 1909. 724 p.

The leading periodical on commercial law is the *Zeitschrift für das gesammte handelsrecht*[1], founded in 1858 by the eminent authority, Prof. L. Goldschmidt and now edited by Prof. Karl Lehmann and others. The *Leipziger zeitschrift für handels-, konkurs-, u versicherungswesen*,[2] founded in 1907, and edited by A. Düringer and H. Könige, judges of the supreme court at Leipzig, and Prof. E. Jaeger, of the University of Leipzig, is popular with the members of the bar in Germany.

Stock Corporations

The various kinds of corporations and associations of natural persons for business purposes are dealt with in Book II of the Commercial Code and in some related statutes. The most common form of corporation is that of the stock company, the law governing which had undergone several amendments previous to its incorporation in the new code of 1897. Fairly good commentaries on the law of stock corporations are those of Albert Pinner[3] and Robert Esser,[4] both published in 1899. The best commentaries, however, are contained in the general works of Staub and Düringer (*supra*, p. 101). Dr. Riesser,[5] of Berlin, published a monograph in 1899 which is a practical and critical discussion of the effect of the new legislation of 1897 and 1898, especially the Commercial Code; on the existing law governing stock corporations. The organization and incorporation of stock companies was the subject of a work by Dr. Silbernagel,[6] published in 1907. It treats Ger-

[1] Zeitschrift für das gesammte handelsrecht. Stuttgart, F. Enke, 1858 and cont.

[2] Leipziger zeitschrift für handels konkurs- u versicherungswesen. Hrsg. von A. Düringer, Prof. E. Jaeger u H. Könige. München, Schweitzer, 1907 and cont.

[3] Pinner, Albert. Das deutsche aktienrecht. Berlin, H. W. Müller, 1899. 382 p.

[4] Esser, Robert. Die aktiengesellschaft, dargestellt und erläutert. 2d ed. Berlin, J. Springer, 1899. 279 p.

[5] Riesser. Die neuerungen im deutschen aktienrecht. Berlin, O. Liebmann, 1899. 217 p.

Silbernagel. Die gründung der aktiengesellschaft. Berlin, Puttkammer & Mühlbrecht, 1907. 513 p.

man, Swiss, French, and English law comparatively. The best work on the general subject is the treatise by Prof. Karl Lehmann [1] on the general law of stock corporations, which appeared in two volumes in 1898–1904. It is an historical, comparative and constructive study of the law of stock corporations in its theoretical and practical aspects. A practical work on the subject was published by Dr. Alexander-Katz.[2] It treats especially of the new code and the legislation relating to it.

Commandite Company

Another important form of business corporation dealt with by the Commercial Code is the "commandite" company (*Kommanditgesellschaft*). This is a form of association neither a partnership nor an ordinary stock corporation, in which some of the members or stockholders are liable to creditors to the amount of their shares only, and the others, the partners, are liable *in solido* as are members of an ordinary partnership. This form of association was provided for originally in an act of July 18, 1884, which has been but little changed by the code. Dr. Victor Ring,[3] judge of the superior court in Berlin, published a commentary on the law of 1884 (2d ed., 1893). Corporation law from the point of view of the treasury balance, in its relation to the stockholders and creditors on the one hand and to the State in its taxing, financial and administrative aspects on the other, constitutes the subject of a very able treatment of all kinds of corpora-

[1] Lehmann, Karl. Das recht der aktiengesellschaften. Berlin, C. Heymann's verlag, 1898–1904. 2 v.

[2] Alexander-Katz, Hugo. Die aktiengesellschaft unter dem neuen aktiengesetz. 5 und 6. tausend. Berlin, H. S. Hermann, 1899. 241 p.

[3] Ring, Viktor. Das reichsgesetz betreffend die kommanditgesellschaften auf aktien und die aktiengesellschaften. 2d ed. Berlin, C. Heymann, 1893. 756 p.

tions by Dr. Hermann Rehm,[1] Professor at Strassburg. The work was published in Munich in 1903.

Limited liability Partnership

The limited liability partnership (*Gesellschaft mit beschränkter Haftung*) was provided for originally in the act of April 20, 1892, reenacted with amendments in 1898. The statute is translated in Appendix B (pp. 235–265) of A. F. Schuster's recent translation of the Commercial Code (*supra*). A detailed discussion of the provisions of that statute is undertaken by Julius Hirschfield in the Law Quarterly Review, volume 9 (January, 1893), pages 62–69. The law gives a small number of partners the privilege, under certain restrictions, of acting as a corporation with limited liability. The leading commentary on the subject is that by the late Dr. Staub,[2] the third edition of which, edited by Dr. Hachenburg, was published in 1909. Besides an exhaustive commentary, an appendix contains the statutes of the States of Germany on the taxation of these limited liability partnerships. A useful work on the subject is edited by Parisius and Crüger[3] (5th ed., 1911).

Cooperative Societies

The present law concerning cooperative societies (*Erwerbs- und Wirtschaftsgenossenschaften*) was enacted May 1, 1889, and was amended by acts of 1896 and 1898. It covers the questions of loans to members, the cooperative purchase or sale of raw materials and manufactured goods, and other joint enterprises. The members have only limited liability.

[1] Rehm, Hermann. Die bilanzen der aktiengesellschaften und gesellschaften m. b. h., kommanditgesellschaften auf aktien, eingetragenen genossenschaften, versicherungsvereine auf gegenseitigkeit, hypotheken- und notenbanken und handels- gesellschaften überhaupt. München, J. Schweitzer verlag (A. Sellier), 1903. 938 p.

[2] Staub, Hermann. Staub's Kommentar zum gesetz, betreffend die gesellschaften mit beschränkter haftung. 3 ed. bearb. von dr. Max Hachenburg. Berlin, J. Guttentag, 1909. 732 p.

[3] Parisius, L. and Crüger, H. Das reichsgesetz betreffend die gesellschaften mit beschränkter haftung. 5th ed. by Crüger. Berlin, Guttentag, 1911. 503 p.

The leading work on the subject is the commentary by Parisius [1] and Crüger (7th ed., 1911). Certain decrees regulating the operations and administration of these societies were promulgated by the Empire and by the various States and are included in the second and third parts of the book. It presents the history of the sections of the act, analyzed and annotated. Another commentary on the same law, taking particular account of the legislation of 1898, with models of forms and corporate by-laws, is that by Dr. Richter,[2] the third edition of which was published in 1900.

RAILROAD LAW

The business of carriers and the conveyance of goods and persons by rail is largely regulated by sections 425–473 of the Commercial Code. An important commentary on the German law concerning the carriage of goods was published by Dr. Georg Eger,[3] a leading authority on railroad law. It is based on the old commercial code, but is still most useful. Germany is a member of the international railroad union. The international agreement of October 14, 1890, as amended June 16, 1898, with the Berne amendments of July 4–18, 1905 and September 19, 1906, is the subject of another prominent work by Dr. Eger.[4]

An important special statute regulating the business of railroads was enacted on December 23, 1908, in force April 21, 1909, concerning especially the liability of railroads for

[1] Parisius, Ludolf. Das reichsgesetz, betreffend die erwerbs- und wirtschaftsgenossenschaften. 7th ed. bearb. von dr. Hans Crüger. Berlin, J. Guttentag, 1911. 712 p.

[2] Richter, Otto. Das reichsgesetz betreffend die erwerbs- und wirtschafts-genossenschaften. 3d ed. Leipzig, G. Weigel, 1900. 644 p.

[3] Eger, Georg. Deutsches frachtrecht mit besonderer berücksichtigung des eisenbahnfrachtrechts. 2d ed. Berlin, Heymann, 1887–1892. 3 v. and supplement.

[4] Eger, Georg. Das internationale übereinkommen über den eisenbahnfrachtverkehr. 3d ed. Berlin, Guttentag, 1909. 536 p.

negligence resulting in loss or damage to goods. This statute replaces previously existing regulations. The leading work on the subject is that by Dr. Georg Eger [1] (3d ed., 1910). Another work on the liability of railroads for damage to goods, written especially from the point of view of the new act of 1908, was published by Dr. Ernst Rundnagel,[2] privy councillor. He discusses the subject, keeping in mind its relation to the relevant sections of the Commercial Code and to the international railroad agreement of October 14, 1890. Dr. Richard Senckpiehl [3] is the author of another work on the law of railroad transportation, *Eisenbahntransportgeschäft.* It constitutes the fifth volume of his larger work *Verkehrsrecht.* Dr. Eger edits an important collection of decisions on railroad law, under the title *Eisenbahnrechtliche entscheidungen,*[4] which first began to appear in 1879. After volume 7, short articles and bibliographic notes on railroad law are also included in the publication.

Automobiles

Closely connected with the law of carriers is the law concerning traffic with motor vehicles, the so-called "automobile law" (*Gesetz über den Verkehr mit Kraftfahrzeugen*) of May 3, 1909, as supplemented by the decree of the Federal Council of February 3, 1910. Dr. Georg Eger,[5] the authority on the law of carriers, also wrote an exhaustive commentary on this automobile law. A useful commentary on the subject is edited by two attorneys of Frankfurt, Neukirch and Rosen-

[1] Eger, Georg. Die eisenbahnverkehrsordnung vom 23 Dez. 1908. 3d ed. Berlin, J. Guttentag, 1910. 628 p.

[2] Rundnagel, Ernst. Die haftung der eisenbahn für verlust, beschädigung und lieferfristüberschreitung nach deutschem eisenbahnfrachtrecht. 2d ed. Leipzig, Dieterich, 1909. 314 p.

[3] Senckpiehl, Rich. Das eisenbahntransportgeschäft nach deutschem recht. Berlin, G. Everth, 1909. 493 p.

[4] Eisenbahnrechtliche entscheidungen und abhandlungen. v. 1–37, 1879–1911. Berlin, C. Heymann; Breslau, J. U. Kern.

[5] Eger, G. Das reichsgesetz über den verkehr mit kraftfahrzeugen. Stuttgart, Deutsche Verlagsanstalt, 1911. 654 p.

meyer.[1] In its arrangement, it follows Staub's commentary on the Commercial Code. The decisions on the Accident Liability Act of 1871 are noted and differences between the old and new legal conditions pointed out. Besides the automobile law, all related laws are annotated and the international rules in matters of tax and license dues, etc., are included.

MARITIME LAW

The greater part of the maritime law of Germany is contained in Book IV of the Commercial Code. This portion of the code is divided into eleven sections: The first deals with general provisions; the second, with the ownership and coownership of vessels; the third, with the master of the vessel; the fourth, chartering; the fifth, the transportation of passengers; the sixth, bottomry; and the seventh, with average, which includes general and particular average. Section 8 deals with salvage and distress at sea; section 9, with the ships' creditors.

Section 10, one of the most important parts of Book IV, deals with marine insurance. It is subdivided into seven titles, of which the first deals with general provisions; the second, with the declarations of the assured at the time of drawing the contract; the third, with the obligations of the assured arising out of the contract; the fourth, with the extent of the risk; the fifth, with the extent of damage; the sixth, with the payment of compensation; and the seventh, with the cancelling of the insurance and the return of the premium.

Section 11 of Book IV deals with prescription.

A translation of Book IV of the Commercial Code, taking the old code of 1861, however, as its basis, is printed as an

[1] Neukirch, A. & Rosenmeyer, A. Kommentar zum Gesetz über den verkehr mit kraftfahrzeugen. Halle, Waisenhaus, 1910. 351 p.

appendix (pp. 687–790) to E. E. Wendt's *Papers on maritime legislation* (3d ed., London, 1888). The Seamen's Act (*Seemannsordnung*) which is an important part of German maritime law, is likewise translated in the same work, pages 790 et seq. Unfortunately it is a translation of the old act of December 27, 1872, which was changed in important particulars by the new Seamen's Act of June 2, 1902. An important work on the German law of maritime commerce has been published in both German and English. This is the book of Dr. Alfred Sieveking,[1] of Hamburg, published in London in 1907. It treats the subject of maritime commerce beginning with the rules concerning the shipment and the legal relations at the port of shipment, followed in their order by the rules concerning the voyage and the delivery of the cargo. It is a concise treatise and covers the Seamen's Act of June 2, 1902, but omits the subject of marine insurance, found in sections 778–900 of the Commercial Code.

An excellent commentary on this fourth book of the Commercial Code, also excluding marine insurance from treatment, however, is that by Judge Georg Schaps,[2] of Hamburg, which was intended to supplement Staub's well known commentary on the Commercial Code. All the changes made in Book IV by the acts of June 2, 1902, and of May 12, 1904, are noted in the appendix, which also contains the maritime provisions of all related statutes. The omitted portion, covering marine insurance, is to be dealt with in a commentary by Dr. Gustav Sieveking, of Hamburg, and published as a supplement to Schaps' work. A collection of all the laws and statutes concerning maritime law is contained in a somewhat bulky

[1] Sieveking, Alfred. The German law relating to the carriage of goods by sea. London, Stevens & Sons, 1907. 380 p.

[2] Schaps, Georg. Das deutsche seerecht. Berlin, J. Guttentag, 1906. 932 p.

volume, edited by E. Brodmann[1] (Berlin, 1905). Another collection which embraces the maritime legislation of the Empire is that by Dr. Ferdinand Perels,[2] the eminent authority on maritime law, the second edition of which was published in 1908. It is based largely on his *Handbuch des allgemeinen seerechts*, published in 1884. All regulations concerning the ocean-carrying trade, the maritime administrative regulations, the ordinances and decrees relating to shipping, the coastal trade and deep-sea fishing, in short, all the maritime legislation not included in the Commercial Code, is brought together in the volume. A rather elaborate commentary on German maritime law was prepared by Lewis and Boyens,[3] the second volume of which was finished in 1901. It is incomplete, as it only comes down to article 733 of the code. It is of importance for its references to the laws of other maritime nations. Naturally, it does not cover the important Seamen's Act of 1902 and other laws promulgated after its publication. A well known and useful treatise is the *Handbuch*,[4] in two volumes, published as a part of the Binding series. The first volume is from the pen of Dr. Rudolph Wagner; it contains a general introduction and treats of the persons of maritime law, the charterer, the broker, the master and crew, etc. Volume 2, written by Prof. Pappenheim, of Kiel, is divided into the law of things and the law of obligations in maritime law. He treats especially the question of ownership, and all kinds of maritime contracts and liens. The new Seamen's Act of 1902, with the other maritime statutes passed on that day, together with the

[1] Brodmann, E. Die seegesetzgebung des Deutschen Reiches. 2d ed. Berlin, O. Häring, 1905. 1124 p.

[2] Perels, Ferdinand. Das allgemeine öffentliche seerecht im Deutschen Reiche. Berlin, E. S. Mittler und sohn, 1908.

[3] Lewis-Boyens. Das deutsche seerecht. v. I–II (1897–1901). Incomplete. Leipzig, Duncker & Humblot.

[4] Wagner and Pappenheim. Handbuch des seerechts. Leipzig, Duncker & Humblot, 1906. 2 v.

amendments of May 23, 1903 and May 12, 1904, are taken into account.

General Average

The law of general average is treated in three large volumes by Dr. R. Ulrich,[1] only volume 1 of which deals strictly with the German law. Volume 2 covers the foreign codified laws on general average, and volume 3 deals particularly with the British and American rules. The York-Antwerp rules and a comparative table are included. The second edition was completed in 1906. A collection of the important laws on marine insurance was published by Dr. C. Gütschow[2] in 1908. The laws are treated comparatively.

Inland Navigation

The law of inland navigation is not covered by the Commercial Code; the subject is governed by a special statute enacted on June 15, 1895, in force since January 1, 1900. As this is one of the matters concerning water laws which was largely left within the legislative jurisdiction of the German States, a complete presentation of the subject is impossible without taking account of the State laws. The work by Dr. Max Mittelstein,[3] the second edition of which was completed in 1903, is regarded as the leading work on the subject. Volume one contains the Imperial regulations, and volume two the State regulations, concerning the law of inland navigation. The important decisions on maritime law, outside of those of the Supreme Court, are those of the *Oberlandesgericht* at Hamburg, published in the *Hanseatische Gerichtszeitung* and in the *Deutsche Juristenzeitung* and by Abraham in his *Hanseatische Rechtsprechung.*

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[1] Ulrich, R. Grosse haverei. 2d ed. Berlin, E. S. Mittler & Sohn, 1903–6. 3 v.

[2] Gütschow, C. Vergleichende zusammenstellung der wichtigeren seeversicherungsrechte. Hamburg, O. Meissner, 1908.

[3] Mittelstein, Max. Deutsches binnenschiffahrtsrecht. 2d ed. Leipzig, Rossberg, 1900–1903. 2 v.

BILLS OF EXCHANGE

The matter of negotiable instruments is largely contained in statutes not included in the Commercial Code. The Bills of Exchange Act, the first subject of uniform legislation in Germany, was originally adopted on May 1, 1849. On June 5, 1869, it was accepted, together with the "Nurnberg novels" or amendments of April 13, 1861, as the law of the North-German Federation, and became the law for all Germany in April, 1871. Changes were effected in the act by the introductory statutes to the Code of Civil Procedure and to the Bankruptcy Act of 1877, especially as to statutes of limitations. The Scandinavian countries, and Switzerland, Russia and Holland, have adopted the German Bills of Exchange Act practically verbatim. An English translation of the act in its unamended form, together with the Nurnberg novels, is printed in volume III, pp. 2787–2808 of Randolph's *Treatise on the law of commercial paper* (St. Paul, 1899). The act of June 3, 1908, effected certain changes in the law, especially making protests more easy, and an entirely amended Bills of Exchange Act was promulgated on that day. A recent work by Leader[1] (London, 1911) contains an English translation of the new German Bills of Exchange Act and the 1908 law of checques. The new (seventeenth) edition of Byles on *Bills* (London, 1911) also contains, in appendix 3, Leader's English translation of that act. By all means the leading treatise on the subject, historical, theoretical and dogmatic, is that by Prof. Karl Grünhut,[2] of Vienna, which appeared in two volumes in 1897, in the Binding series. The new act of 1908 is necessarily not considered. The last (eighth)

[1] Leader, S. The German law of bills of exchange and of cheques. London, Sweet & Maxwell, 1911. 34 p.

[2] Grünhut, Carl. Wechselrecht. Leipzig, Duncker & Humblot, 1897. 2 v.

edition of Staub,[1] the best commentary on the act, takes the new legislation of 1908 and the decisions up to 1911 into account. Gareis[2] is the author of a good work on the subject, which includes in its treatment the tax law of July 15, 1909.

Cheques

The German law of cheques of March 11, 1908, was inspired by a general desire to popularize the use of that form of commercial paper. (See art. 17 of the statute introducing the new German Commercial Code.) Leader's recent work (*supra*) contains a translation of the law of March 11, 1908. A translation of that act, together with an editorial comment on some of its principal features, appeared in the Banking Law Journal, volume 25 (1908), pages 536–537, 551–558. An analysis of the act, with comparative references to the German Bills of Exchange Act of 1849, appeared in volume 2 (1909) of the Annual Bulletin of the Comparative Law Bureau, pages 29–40, from the pen of Prof. E. G. Lorenzen. The article is preceded by a bibliographic headnote by W. W. Smithers, citing the laws of other countries on the subject, with special reference to the sections of the respective Commercial Codes in which the matter is dealt with. This same statute was the subject of an article by Dr. Ernest Schuster (Journal of the Society of Comparative Legislation, vol. 9, August, 1908, pp. 79–83), in which the requirements of the new act are compared with the British law on the subject.

A useful commentary on the act, by Prof. Ludwig Kuhlenbeck,[3] was published in 1908. There is a long introduction, together with commentary, notes, and forms. Another good

[1] Staub, H. Kommentar zur wechselordnung. Eighth edition. bearb. von M. Stranz. Berlin, J. Guttentag, 1912.

[2] Gareis, Karl. Die allgemeine deutsche wechselordnung nebst dem wechselstempselgesetz von 15. 7. 1909. 8th ed. München, 1910.

[3] Kuhlenbeck, L. Das deutsche scheckgesetz. Breslau & Leipzig, Langewort, 1908. 139 p.

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book on the subject, by Dr. Walter Conrad,[1] contains references to foreign legislation (principally derived from the *Handelsgesetze des erdballs*) and, in an appendix, the law of cheques of the more important commercial countries. Dr. Hans Lessing[2] published a handy little work on the subject, in which foreign legislation is also noted. A critical work of some interest is that recently published by Prof. Langen[3] of Münster. In this book, questions on the law of cheques not answered by the act itself, the new Bills of Exchange Act, and many phases of the law of negotiable instruments are the subject of critical discussion.

Stock Exchange Law

A number of important statutes relating to commercial law have been enacted. One of these is the stock exchange law (*Börsengesetz*) of June 22, 1896, amended on May 8, 1908. This act of May 8, 1908, is translated into English in one of the volumes published by the National Monetary Commission.[4] It is entitled *German imperial banking laws*, edited by Dr. R. Koch. Besides its translation of the stock exchange law, it contains the regulations for the Berlin Exchange of December, 1908, and provisions concerning brokers on that exchange. The important provisions of the law of 1908 are discussed briefly in the Journal of the Society of Comparative Legislation, March, 1911, page 326. A useful commentary on the act, based on the new amendment, was published under the auspices of the German Bankers' Association by Rehm,[5]

[1] Conrad, Walter. Handbuch des deutschen scheckrechts. Stuttgart, F. Enke, 1908. 340 p.

[2] Lessing, Hans. Scheckgesetz vom 11. März 1908. München, J. Schweitzer, 1908. 262 p.

[3] Langen, Prof. A. Zum scheckrecht. Erörterungen über die rechtslage des schecks ausserhalb des scheckgesetzes. Berlin, Heymann, 1910. 140 p.

[4] Koch, Richard. German imperial banking laws. Together with the German stock exchange regulations. S. Doc. 574, 61st Cong. 2d sess. Washington, G. P. O., 1910.

[5] Kommentar zum börsengesetz. Auf veranlassung des zentralverbandes der deutschen bankiergewerbes von Rehm, Trumpler, Dove, Neukamp and others. Berlin, Guttentag, 1909. 464 p.

Trümpler, Dove, and others. It appeared in 1909. A recent work by Dr. Otto Bernstein,[1] which includes the 1908 amendment, was published in 1910.

Banking Law

The banking laws of Germany are contained in the statutes organizing the *Reichsbank* of March 14 and May 21, 1875 and in the amending statutes of December 18 and June 7, 1899 and June 1, 1909. All these statutes are translated and critically discussed in the work by Koch (*supra*) published by the National Monetary Commission. One of the best editions of the Banking Act and its amendment is edited by A. Henschel,[2] published in 1910.

Custody of Negotiable Instruments

Another important law is that concerning the safe custody of negotiable instruments (*Gesetz betreffend die Pflichten der Kaufleute bei der Aufbewahrung fremder Wertpapiere*) enacted July 5, 1896. It concerns the rights, duties and liabilities of the parties concerned in a transaction of deposit of securities for safe-keeping or by way of pledge, with brokers, merchants, etc. A translation of the Act is printed as Appendix A (pp. 229–234) of A. F. Schuster's translation of the Commercial Code (*supra*). A critical discussion of the statute was published in 1906 by Prof. Riesser,[3] of Berlin.

Mortgage Bank Law

The mortgage bank law (*Hypothekenbankgesetz*) of July 13, 1899, is also important. A small commentary by Merzbacher [4] and another by Löhr [5] are perhaps the best on the subject. A recent volume by Dannenbaum [6] treats the subject exhaustively, both from the legal and the economic points of view.

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[1] Bernstein, Otto. Das Börsengesetz. Leipzig, Rossberg, 1910. 407 p.

[2] Henschel, Albert. Bankgesetz vom 14. märz 1875. Berlin, F. Vahlen, 1910. 492 p.

[3] Riesser, Dr. Das Bankdepotgesetz. Berlin, Otto Liebmann, 1906. 128 p.

[4] Merzbacher, S. Hypothekenbankgesetz vom 13. 7. 1899. München, Beck, 1899. 145 p.

[5] Löhr, Josef. Das hypothekenbankgesetz vom 13. 7. 1899. Leipzig, 1906. 155 p.

[6] Dannenbaum, Fritz. Deutsche hypothekenbanken. Berlin, F. Vahlen, 1911. 418 p.

BANKRUPTCY

The German law of bankruptcy was first unified on February 10, 1877 (effective Oct. 1, 1879), and was amended with the other important codes in 1898. An article in the Law Times, volume 72 (1881–82), pages 58–59, 434–435, discusses the procedure and mechanism of the law, including the question of the distribution of assets among creditors. The leading commentary on the subject is that by E. Jäger,[1] the fourth edition of which has just been completed. Another popular commentary was written by Judge Wilmowski,[2] a sixth edition of which appeared in 1906. The questions of bankruptcy law and procedure are also discussed in an important treatise by Prof. Hermann Fitting,[3] of Halle, the celebrated discoverer of the work of Irnerius, founder of the classic law school at Bologna (J. D. Wilson in *Juridical Review*, 1894, vol. 6, pp. 304–307). The third edition appeared in 1904. An important work on bankruptcy procedure, one of the Binding series, is the treatise by Prof. Seuffert,[4] of Munich, based on the new legislation of 1898. It is an historical and dogmatic presentation of the subject.

Creditors' Suits

An important law, closely related to bankruptcy, is that concerning creditor's suits, where, among other contingencies, the circumstances indicate an assignment or other disposition of assets in fraud of creditors (*Gläubigeranfechtung*). This law of July 21, 1879, as amended May 20, 1898, is ably

[1] Jäger, E. Kommentar zur konkursordnung u. den einführungsgesetzen. 3d and 4th ed. Berlin, J. Guttentag, 1907–11.

[2] Wilmowski, Gustav Karl Adolf von. Deutsche reichs-konkursordnung. Nach dem tode des verfassers fortgesetzt von dr. K. Kurlbaum . . . A. Kurlbaum . . . und W. Kühne . . . 6th ed. Berlin, F. Vahlen, 1906. 788 p.

[3] Fitting, Hermann Heinrich. Das reichs-konkursrecht und konkursverfahren. 3d ed. Berlin, J. Guttentag, 1904. 523 p.

[4] Seuffert, Lothar. Deutsches konkursprozessrecht. Leipzig, Duncker & Humblot, 1899. 483 p.

treated in a work by Dr. Ernst Jaeger,[1] published in 1905, and in the standard work on the subject by Falkmann.[2]

TRUSTS AND MONOPOLIES

Under the principle of industrial liberty, trusts (*Kartellen*) and combinations of capital are regarded as lawful. The only limitation seems to be that they must not be against morality (*gute Sitten*) according to section 138 of the German Civil Code, nor unlawfully injure another, according to section 826 of that code. Both sections have received the most liberal of constructions. Nor theoretically must they establish a monopoly, nor exploit the public, although in practice these principles seem to have been generally disregarded. Occasionally a trust has been declared unlawful by reason of having been found guilty of extortion under the Penal Code.

In an article by Francis Walker in the Political Science Quarterly, volume 20 (1905), pages 13–41, on the "Law concerning monopolistic combinations in Europe", several pages (14–21) are devoted to the law of Germany. A recent Government publication, *Trusts in foreign countries*, printed for the use of the Senate Committee on Interstate Commerce (1911), contains the article by Walker above mentioned, and other articles on the legal status and operation of trusts in Germany. The subject of trusts in Germany is the basis of an interesting note in volume 36 (May 7, 1908) of the National Corporation Reporter, page 445. A popular article by G. H. Montague, "German and British experience with trusts", in volume 107 Atlantic Monthly, pages 155–164 (February, 1911) is of interest. The subject was discussed at length in the twenty-sixth convention of German jurists (*Deutscher*

[1] Jaeger, Ernst. Die gläubigeranfechtung ausserhalb des konkurses. Berlin, J. Guttentag, 1905. 344 p.

[2] Falkmann, R. Die anfechtung von rechtshandlungen durch die gläubiger ausserhalb des konkurses. Berlin, 1908. 117 p.

Juristentag) 1902 and again at their meeting in 1904. A critical discussion of the law of trusts and monopolies is contained in a work by Dr. Simon Rundstein [1] published in 1904. A small book, written from a legal standpoint, is that of Dr. Rudolf Hüttner [2], published in 1909. Josef Grünzel [3] (Leipzig, 1902) and Baumgarten and Meszleny [4] (Berlin, 1906) are the authors of two works dealing with the legal and economic aspects of the subject. The latter is a comparative study. Ludwig Silberberg, the editor of the periodical *Deutsches Kartell-jahrbuch*,[5] has recently published a small volume on the German law of trusts.[6] It has been favorably reviewed. In 1906, the German Government (Department of Interior) prepared a voluminous memorial concerning trusts in Germany, entitled *Denkschrift über das kartellwesen* (Berlin, Heymann).

INSURANCE

The German law of insurance is dealt with in a number of statutes. The act of May 12, 1901 governing private insurance (*Privat-versicherungsunternehmen*) regulates the precautions required to be taken for the safety of the policy holders on the establishment of insurance companies, and provides for the appointment of a Government board by which they are controlled. The laws as to social insurance (against acci-

[1] Rundstein, Simon. Das recht der kartelle. Berlin, R. V. Decker, 1904. 118 p.

[2] Hüttner, Rudolf. Das recht der kartelle in Deutschland. Leipzig, Rossberg, 1909. 147 p.

[3] Grünzel, Josef. Über kartelle. Leipzig, Duncker & Humblot, 1902. 332 p.

[4] Baumgarten und Meszleny. Kartelle u. trusts. Berlin, O. Liebmann, 1906.

[5] Deutsches Kartell-jahrbuch, hrsg. v. Ludwig Silberberg. Begun in 1910. One volume annually. Berlin, Puttkammer & Mühlbrecht, 1910 and cont.

[6] Silberberg, Ludwig. Handbuch des deutschen kartellrechts. Berlin, Puttkammer & Mühlbrecht, 1911. 327 p.

dent, sickness, invalidity, old age, etc.) are contained in the recent Workmen's Insurance Code (*Reichsversicherungsordnung*) of 1911. The subject of marine insurance is governed by sections 778–900 of the Commercial Code (*supra*). The Civil Code deals with life insurance for the benefit of a third party (sec. 330) and contains certain rules as to contracts providing for annuities (secs. 759–761). In addition to these statutes there existed prior to the coming into force of the act of May 30, 1908 (in force Jan. 1, 1910) relating to insurance contracts (*Gesetz betreffend den Versicherungsvertrag*), a complex and divergent State law on the same subject which was expressly upheld by article 75 of the statute introducing the Civil Code.

This act of May 30, 1908 does not interfere with previously existing Imperial law, but with a few exceptions, specified in sections 191–193, it revokes the existing State law. The act is divided into four parts of which part one has four subdivisions. The first contains the general rules dealing with the form of insurance contracts, and the effect of provisions as to forfeiture, prescription, and other matters; the second subdivision deals with the duty of the insurer to make full disclosure and the right of the insurer to give notice to determine the contract in the event of an unexpected increase of the risk; the third subdivision regulates the payment of premiums; and the fourth, the rights and powers of insurance agents.

Part 2 of the act deals with insurance against damage (fire insurance, insurance against hail, insurance of cattle, of property carried by land, and liability insurance). The third and fourth parts respectively contain the special rules relating to life insurance and insurance against accidents.

A brief account of the provisions of the act of 1908 is to be found in the Journal of the Society of Comparative Legislation, March, 1911, pages 324–325. The provisions of both the acts of 1901 and 1908 are discussed in French by Ernest

Lehr in the *Revue de droit international*, volume 42 (1910), pages 263–303.

The act of May 12, 1901 is treated in a good commentary by Dr. H. Rehm,[1] a third edition of which has just been issued (1911). Dr. Manes[2] of Berlin, one of the leading authorities on insurance law, has likewise written a commentary on the act of 1901, which was published in a second edition in 1909 by Otto Hagen.

The act of 1908 has called forth a considerable literature of which only the most important contributions can be noticed here. A small but good annotated edition of the act was published in 1908 by Dr. Konrad Schneider,[3] a judge of the court of appeal. The leading commentary on the act of 1908 was published under the general editorship of Dr. Manes,[4] of Berlin, with the cooperation of a number of other authorities on insurance law. The work appeared in 1908. Dr. Kurt Heyne[5] is the author of a small work dealing with fire insurance based on the regulations of the act of 1908.

The leading treatise on the general law of insurance is that by Prof. Ehrenberg[6] of Göttingen, only one volume of which has been published. It was issued in the Binding series. As a statement of existing law it has become some-

[1] Rehm, H. Reichsgesetz über die privaten versicherungsunternehmungen vom 12. V. 1901. 3d ed. München, Beck, 1911. 429 p.

[2] Manes, A. Das reichsgesetz über die privaten versicherungsunternehmungen vom 12. V. 1901 mit erläuterungen. 2d ed., by O. Hagen. Tübingen, J. C. B. Mohr, 1909. 398 p.

[3] Schneider, Konrad. Reichsgesetz über den versicherungsvertrag. München, Beck, 1908. 555 p.

[4] Manes, Alfred. Kommentar zum deutschen reichsgesetz über den versicherungs-vertrag; von Stephan Gerhard . . . Otto Hagen . . . Hugo v. Knebel-Doeberitz . . . Hermann Broecker . . . Alfred Manes . . . Berlin, E. S. Mittler und Sohn, 1908. 818 p.

[5] Heyne, Dr. Kurt. Versicherung gegen branschaden und die brandschaden-regulierung. Leipzig, Duncker & Humblot, 1910. 193 p.

[6] Ehrenberg, Victor. Versicherungsrecht. Leipzig, Duncker & Humblot, 1893. 1 v.

what antiquated by reason of recent legislation, but it is excellent for its theoretical discussions of general doctrines in special kinds of insurance. A large work of reference, in the form of a dictionary, which covers both commercial (private) insurance and social (workmen's and employees') insurance, was edited by Dr. Manes [1] and published in 1909. It includes Austrian and Swiss, as well as German law,

Besides the general collections of court decisions, two series of reports are devoted to the special subject of insurance. One of these series is edited by Stephan Gerhard,[2] and entitled *Praxis des privatversicherungsrechts*. It is published in three volumes (1908–1911). The other series is edited by F. Hacke [3] and covers the decisions of the highest courts on all branches of insurance law excepting marine insurance. This collection is published in two volumes (1910), the first of which covers private insurance, and the second, social insurance.

SOCIAL INSURANCE

The philosophical principles underlying social legislation in Germany in its modern development may be said to have been first expressed in the works of Fichte in the early years of the nineteenth century. The first definite proposal for the adoption of compulsory insurance as a state institution originated with Dr. Albert Schaeffle, the leader of the social democrats. Two of his most prominent works, his *Impossibility of social*

[1] Manes, Alfred. Versicherungslexikon; ein nachschlagewerk für alle wissensgebiete der privat- und der sozial-versicherung insbesondere in Deutschland, Oesterreich und der Schweiz. Tübingen, J. C. B. Mohr (P. Siebeck) 1909. 1682 col.

[2] Gerhard, S. Praxis des privatversicherungsrechts. Berlin, E. S. Mittler & Sohn, 1908–1911. 3 v.

[3] Hacke, F. Die rechtsprechung des reichsgerichts, des reichsoberhandelsgerichts . . . auf dem gebiete des versichungsrechts. Berlin, W. Moeser, 1910. 2 v.

democracy[1] and *Theory and policy of labor protection*[2] have been translated into English. For more than a generation, insurance had constituted one of the definite attributes of the trade guilds (*Innungen* and *Erwerbs- und Wirtschaftsgenossenschaften*). The growing restiveness and political influence of the social democrats finally induced Bismarck to initiate governmental action in support of compulsory insurance. Germany was the first country to adopt a system of compulsory insurance of workmen on a national scale as a part of the policy of a great industrial nation.

Employers' Liability.

As early as 1838, shortly after the construction of its first railroad, Prussia placed on all railroads the duty to make compensation for all injuries which the railroad could not show were due to unavoidable accident, or the fault of the victim. The present system of compulsory insurance against accident, sickness, and invalidity was preceded by an Employers Liability Act (*Reichshaftpflichtgesetz*) of June 7, 1871, which secured to the employee in certain branches of gainful occupations, especially in railways, mines and factories, a definite legal right to indemnification under the following circumstances: first, in railway accidents when the employer can not show that the injured employee suffered by his own fault, or by circumstances beyond the employer's control; second, in other cases, mines, quarries and factories, when the injured employee on his part can show that either the employer or his agents were in fault. It is a short act of ten articles. A translation of this act is printed in Appendix A, page 814, of the Seventeenth Annual Report of the New York Bureau of

[1] Schäffle, Albert. The impossibility of social democracy. Translated from the fourth German edition by A. C. Morant. London, Swan, Sonnenschein, 1892. 419 p. New edition, London, G. Allen, 1911. 336 p.

[2] Schäffle, Albert. The theory and policy of labour protection. Edited and translated by A. C. Morant. London, Swan, Sonnenschein, 1893. 252 p.

Labor Statistics and in volume 2 of the Twenty-Fourth Annual Report of the United States Commissioner of Labor, pages 2551–2552.

This Employers Liability Act of 1871 did not bring about the desired result. The heavy burden of proof cast upon the injured employee and the necessity of proving negligence almost frustrated the beneficent intentions of the measure. By reason of the Compulsory Insurance Acts against accident and sickness of 1883 and 1884, with their amendments, this Employers Liability Act of 1871 has lost much of its importance. It still applies, however, (*a*) to persons injured in factories who are independent of the employer, and to railway passengers; (*b*) to managers, heads of departments, and other employees who are not included within the provisions of the compulsory insurance laws, in other words, those who receive a salary of more than 3,000 marks (formerly 2,000); (*c*) to enterprises not embraced within the Accident Insurance Acts, according to the decisions of the *Bundesrat*, and in a few other cases. The leading work on the subject of employers liability under the act of 1871 is that of Dr. Georg Eger,[1] the seventh edition of which has just been published (1912). The Act and its operation is also discussed in many of the works in English on compulsory workmen's insurance (*infra*).

Workmen's Insurance Code

Germany has recently codified its laws on all the various branches of workmen's insurance. The code (*Reichsversicherungsordnung*), promulgated July 19, 1911, is fully up to the standard of the splendid codifications of other branches of German law. The new Workmen's Insurance Code contains

[1] Eger, Georg. Das reichs-haftpflicht-gesetz betreffend die verbindlichkeit zum schadenersatz für die bei dem betriebe von eisenbahnen, bergwerken, steinbrüchen, grabereien und fabriken herbeigeführten tödtungen und körperverletzungen. Vom 7 Juni 1871. 7th ed. Hannover, Helwing, 1912. 669 p.

1805 sections and an extensive introductory law; with the exception of the Civil Code, it is now the largest code in the German Empire. This code takes the place of the following statutes: The Sickness Insurance Act of June 15, 1883, as amended April 10, 1892, with the amendments of June 30, 1900, and May 25, 1903; the act of May 5, 1886, concerning accident and sickness insurance of persons engaged in agricultural and forestry industries; the Industrial Accident Insurance Law of June 30, 1900, amending and codifying the accident insurance laws in various branches of industry; the Mercantile Accident Insurance Act, as promulgated July 5, 1900, and the Invalidity Insurance Act of July 13, 1899, as promulgated July 19, 1899. The code has extended the application of different forms of workmen's insurance to new industries and to new beneficiaries.

The new Insurance Code, which awaits certain administrative regulations before coming into force, embraces six books, which deal respectively with the following matters: First, general provisions, particularly the organization of the insurers and the Imperial Insurance Office (*Reichsversicherungsamt*). The second book deals with sickness insurance. Sickness insurance instead of being confined to certain industries is now extended to all employments. The third book covers accident insurance in its three branches, industrial, agricultural and mercantile. The number of industries and occupations to which accident insurance is applicable has also been greatly extended. The organization of the administration of accident insurance has been changed but slightly. The fourth book, dealing with invalidity, includes the new widows' and orphans' insurance laws. Book 5 contains only 44 sections. It regulates the legal relations of sickness insurance to invalidity insurance and to widows and orphans insurance, and of accident to invalidity and widows and orphans insurance. It may well happen that in a given case

two or three of these forms of insurance may be applicable; hence the necessity of regulating their concurrent application. Book 6 regulates the common procedure for all branches of social insurance. There is now a common forum, many of the former arbitration courts with their peculiar appellate jurisdictions being abolished. The new jurisdictional courts in these insurance cases are: First, the *Versicherungsamt;* second, the *Oberversicherungsamt;* and third, for important cases, the *Reichsversicherungsamt* (*Landesversicherungsamt*), as a court of last resort. In assessing damages, there is now a larger representation of employees in the court than heretofore.

One of the principal objects of the Imperial Insurance Office is to secure uniform construction and interpretation of the law as between the adjudications of the various inferior courts, and uniformity in the administration of the law. For that reason it has been relieved of jurisdiction in minor cases.

A good description of the contents of the new code, with special emphasis on the changes brought about in the old law, is contained in an article by Prof. Lass, of Berlin, which appeared in the *Deutsche juristen-zeitung* for September 1, 1911, columns 1031–1041. A valuable account of the scope and contents of the new code is printed as an Introduction (pp. 501–506) to a recent English translation of the new Workmen's Insurance Code which has been made by Dr. Henry J. Harris, now Chief of the Documents Division of the Library of Congress. This translation is published in Bulletin 96 of the United States Bureau of Labor, pages 507–774.

The new code of 1911 has restated and codified the former laws on the individual branches of the subject, but the substantive provisions of the law have been but slightly altered. The new code has already brought out a large number of anno-

tated editions and commentaries, but for some years to come, the important literature on the law in force before codification will still be considered authoritative, and in this Guide, can not be overlooked. An important document showing the origin and history of each section of the new code is known under the following title: *Verhandlungen des reichstags, XII Legislaturperiode, II Session, Anlagen zu den stenographischen berichten, Sec. 340, Provisorischer teil.* Besides the code itself, this document contains an exhaustive description of its contents, its bases and "motives," and its relation to previously existing law, with explanatory notes throughout. Reciprocal tables show the location of provisions of the former laws in the new code and indicate the specific origin of each of its sections.

A convenient edition of the new code in four small volumes, edited by Manes,[1] Mentzel, and Schulz, is being published at Leipzig by Göschen Verlagsbuchhandlung. Practical editions of the code in one or two volumes are being prepared. From the advance-notices, the most desirable of these seem to be the commentary by Stier-Somlo[2] and the two volume commentary by Gugel and Schmid.[3] Extensive commentaries, in four or more volumes, are being prepared by Düttmann[4] and by Hanow[5], each with the cooperation of several other editors. The editors of Hanow's commentary are all officials of the Imperial Insurance Office. Parts of the last mentioned works have already been published.

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[1] Manes, Mentzel and Schulz. Reichsversicherungsordnung. Leipzig, Göschen, 1911. 4 v.

[2] Stier-Somlo, F. Kommentar zur reichsversicherungsordnung und ihrem einführungsgesetz, v. 19. 7. 1911. Berlin, F. Vahlen, 1911–12.

[3] Gugel and Schmid. Kommentar zur reichsversicherungsordnung. Berlin, E. Weber, 1911–12. About 1600 p. 2 v.

[4] Düttman, F. Appelius, P. Brunn u. a. Kommentar zur reichsversicherungsordnung. Altenburg, Geibel, 1911. 4 v.

[5] Hanow, H., F. Hoffmann, R. Lehmann, St. Moesle, W. Rabeling. Kommentar zur reichsversicherungsordnung. Berlin, Heyman, 1911. 5 v.

A new periodical, devoted entirely to social insurance, has been announced. It is edited by Düttmann, Appelius, and Brunn.[1]

The German system of social insurance has been given a wide extension by the law of December 20, 1911. That law *Das Versicherungsgesetz für Angestellte* provides for insurance against invalidity and old age for salaried employees, including superintendents, foremen, musicians, actors, tutors, ship's officers, and others whose salary does not exceed five thousand marks per year. Employees between the ages of sixteen and sixty are eligible for admission to the benefits of this insurance, whose benefits extend likewise to widows and orphans. Compulsory sickness insurance was first provided for this class of persons in the new Workmen's Insurance Code of July, 1911. An English translation of the law of December 20, 1911, will be prepared during 1912 by Dr. H. J. Harris. It will be published in one of the bulletins of the Bureau of Labor.

This law for the insurance of salaried employees will not go into effect until certain regulations for its operation are drawn up. It will hardly come into force before 1913. The law has brought in its train the usual number of commentaries, the largest of which, to date, is edited by the well-known authority Dr. Manes, collaborating with Dr. Paul Königsberger.[2] Two other small commentaries recently announced are those by Habermann[3] and Brunn.[4]

The system of workmen's insurance in Germany has given rise to a great deal of important literature in the English

[1] Archiv für reichsversicherung. Sammlung der ausführungsbestimmungen u. bemerkenswerten entscheidungen zur reichsversicherungsordnung, etc. Schriftleiter, A. Düttmann. Oldenburg, Littmann, 1912.

[2] Manes u. Königsberger. Das versicherungsgesetz für angestellte. Leipzig, Göschen, 1912.

[3] Habermann, M. Versicherungsgesetz für angestellte. Leipzig, Poeschel, 1911. 167 p.

[4] Brunn. Kommentar zum versicherungsgesetz für angestellte. Berlin, Heymann, 1912.

language. Probably the most complete of the English works on the subject is chapter 5 of the Twenty-fourth Annual Report (1909) of the United States Commissioner of Labor (Washington, Government Printing Office, 1911, pp. 977–1493). This chapter presents the economic and legislative history of the three principal laws embracing workmen's insurance (sickness, accident, invalidity), with their amendments, an analysis of the acts themselves, an administrative and statistical account of the insurance system, and a brief bibliography. John Graham Brooks in the Fourth Special Report of the Commissioner of Labor (Washington, 1893), prepared an account of the origin of compulsory insurance in Germany; although now almost twenty years old it is still of importance. A recent work by Frankel and Dawson [1] published under the auspices of the Russell Sage Foundation, constitutes one of the best contributions to the subject of "workingmen's insurance in Europe." A large part of the book is devoted to the system prevailing in Germany. A well-selected bibliography, divided by countries, adds to the value of the work. The bibliography on employers' liability and workmen's compensation recently published by the Library of Congress (Government Printing Office, 1911) is important for the more recent literature on the subject. The early history and literature of workmen's insurance previous to 1882 is discussed in an article by A. von Miaskowski *Zur geschichte und literatur des arbeiterversicherungswesen in Deutschland* (*Jahrbücher für national ökonomie und statistik*, N. F., vol. 4, 1882, pp. 474–496).

Germany's exhibit at the St. Louis Exposition in 1904 was accompanied by two monographs of considerable value. The first, entitled *German workmen's insurance as a social institution*, in five parts, was prepared by order of the

[1] Frankel and Dawson. Workingmen's insurance in Europe. New York, Charities Pub. Committee, 1910. 477 p.

Imperial Insurance Office at Berlin. It discusses the subject in all its phases, especially emphasizing the legal, economic, and administrative. The second, entitled *Guide to the workmen's insurance of the German Empire*, was prepared by Dr. Georg Zacher, the eminent authority on workmen's insurance (Berlin and London, Asher, 1904, 32 p.). This little monograph, under its German title *Leitfaden zur arbeiterversicherung des Deutschen Reichs*, has appeared in many editions, the last of which is the thirteenth (Berlin, Behrend & Co., 1908). A handbook (*Jahrbuch der arbeiterversicherung*, 1908–1911) is published annually in two small volumes; it is useful as an aid in the administration of the workmen's insurance laws. It contains all the statutes, is fully annotated by decisions, and is amply provided with statistical tables.

Of the articles in English on the subject of workmen's insurance probably none exceed in importance the series of four articles published by Norbert Pinkus in the Yale Review during 1904–5 (v. 12, pp. 372–388; v. 13, pp. 72–97; 296–323; 418–434). The author undertakes a critical study of the influence of workmen's insurance upon the whole social structure, the scope of the system, and its results. The first two articles deal with the economic and what the author calls the social hygienic aspects of workmen's insurance legislation in Germany. The moral influence was but barely indicated, and the omission induced Professor Farnam of Yale to write a somewhat controversial article "The psychology of German workmen's insurance" (Yale Review, May, 1904, v. 13, pp. 98–113), which took up some of the objections to the compulsory insurance system. To supplement the remarks of Professor Farnam and discuss the objections raised by him was the object of Pinkus's third and fourth articles. In these articles he discusses particu-

larly the reciprocal relations of government, workmen, and employers, the moral influence of the system, and accident statistics. To the last of these articles Professor Farnam added a postscript in refutation. The whole series constitutes an important contribution.

A criticism of Germany's system of social insurance has recently appeared in the English translation of a tract by Dr. Ferdinand Friedensburg, retired president of the Senate in the Imperial Insurance Office. The article appeared first in the *Zeitschrift für politik*, vol. 4. His particular criticism is that while intended to eliminate pauperism and charity, the system has produced pauperism in another form, that it has fostered the German evil of bureaucratic formalism and has inspired fraud, a demoralizing practice on the part of the insured. The translation has been made by Dr. L. H. Gray and is published under the title *The practical results of workmen's insurance in Germany* by the Workmen's Compensation Service and Information Bureau, No. 1 Broad Street, New York City. Experts on social insurance consider this criticism unfair, in that it gives exaggerated importance to the minor and occasional defects of any great system and fails to take into account its general beneficial results. Dr. Georg Zacher in an article in the American Journal of Sociology (September, 1911, v. 17, pp. 177–187) upholds the benefits of the system and refutes some of the arguments advanced in Friedensburg's monograph. He also discusses briefly the extent to which the system has spread to foreign countries. Alfred Mond in the English Review (June, 1911, v. 8, pp. 486–506) describes briefly the scope of the new code of 1911, takes up some of the criticisms which have been directed against the system, and compares some of the features of the German and English systems of social insurance. An article by Dr. E. J. Schuster "National health insurance in England and Germany" (Journal of the Society

of Comparative Legislation, pp. 11–32) discusses in detail the provisions of the British National Insurance Bill and makes brief comparisons with the system of social insurance in operation in Germany. J. A. Emery in volume 4 (1911), pages 17–32, of the *Annual Bulletin* of the Comparative Law Bureau gives an account of the American, English, and German systems of compulsory insurance.

Prof. Stier-Somlo,[1] of Bonn, published in 1906 an important work on the social legislation of Germany. The first volume, besides the historical portion, deals with sickness insurance. A second volume [2] which has recently been published (1912), undertakes a scientific and theoretical discussion of the bases of the new Insurance Code.

A few works dealing with the various constituent branches of compulsory insurance in Germany must be mentioned. A good collection of all the laws on the subject was published by Prof. Piloty,[3] of Würzburg (3d ed., 1900–1908). A scientific treatise on the general subject is that by Prof. Heinrich Rosin,[4] of Freiburg, in two volumes (1893–1905). Prof. Richard Weyl,[5] of Kiel, is the author of an important treatise on workmen's insurance (1894).

The three important branches of social insurance, sickness, accident, and invalidity and old age, have been treated separately as well as in the general literature mentioned above. The first act was that insuring workmen against sickness

[1] Stier-Somlo. Deutsche sozialgesetzgebung. Geschichtliche grundlagen u. krankenversicherungsrecht. Jena, Fischer, 1906. 408 p.

[2] Stier-Somlo, F. Studien zum sozialen recht, insbesondere zur reichsversicherungsordnung. Mannheim, Bensheimer, 1912.

[3] Piloty, Robert. Arbeiterversicherungs-Gesetze. 2/3 ed. München, C. H. Beck, 1900–1908. 3 v.

[4] Rosin, Heinrich. Das recht der arbeiter-versicherung. Berlin, Guttentag, 1893–1905. 2 v.

[5] Weyl, Richard. Lehrbuch des reichsversicherungsrechts (Kranken-, unfall-, invaliditäts- und altersversicherungsrechts). Leipzig, Duncker & Humblot, 1894. 1067 p.

(*Krankenversicherungsgesetz*), which was passed on June 15, 1883. The preliminary steps are described in the Fourth Special Report of the United States Commissioner of Labor, prepared by John Graham Brooks (*supra*). A translation of this act of 1883, together with a translation of the Accident Insurance Act of 1884, was published by Prof. Taussig in the Quarterly Journal of Economics in an article entitled "Insurance for workmen in Germany," volume 2 (1887), pages 111–134. The Sickness Insurance Act was amended in essential particulars on April 10, 1892, June 30, 1900, and May 25, 1903. A leading commentary on the law of sickness insurance was published by Dr. E. von Woedtke,[1] an authority on all branches of compulsory insurance of workmen. Another useful work on the subject is that of Dr. Theodore H. Petersen [2] (6th ed., 1908).

The Accident Insurance Law (*Unfallversicherungsgesetz*) is the most important of the legislation dealing with workmen's insurance. A partial translation of the act appears in Appendix B, pages 815–820 of the Seventeenth Annual Report, 1899, of the New York Bureau of Labor Statistics (Albany, Lyon, 1900). This same report, pages 731–939, contains an instructive account of the operation of the law, including statistics. The original act of 1884 applied to workmen in manufacturing and mining industries, etc. By the act of May 28, 1885, compulsory accident insurance was extended to inland transportation trades and to important departments of the Federal and State governments, such as telegraph, army, and navy. On May 5, 1886, sickness and accident insurance were extended to persons engaged in agriculture and forestry.

[1] Woedtke, E. von. Krankenversicherungsgesetz vom 15 Juni 1883. Kommentar. 5th ed. Berlin, Guttentag, 1896. 625 p.

[2] Petersen, Th. H. Das Krankenversicherungsgesetz vom 15. VI 1883—mit ausführungsbestimmungen. 6th ed. Hamburg, Grefe & Tiedemann, 1908. 960 p.

By two acts, July 11, and July 13, 1887, compulsory insurance was extended to persons employed in the building trades and in navigation enterprises. Largely to secure uniformity in administration, the accident insurance laws in practically all industries except agriculture and forestry, were consolidated on June 30, 1900, into an act now called the "Industrial Accident Insurance Law" (*Gewerbeunfallversicherungsgesetz*). It applies to workmen whose wages do not exceed 3,000 marks per annum. It is translated in the Twenty-fourth Annual Report of the United States Commissioner of Labor, volume 2, pages 2509–2551.

European legislation on matters of compensation for industrial accidents was discussed in a memorandum in the Blue Book, Cd. 2458, which forms volume 3 of the Proceedings of the Departmental Committee on Workmen's Compensation, appointed by the home secretary in November, 1903. The report of the committee was issued in August, 1904 (Blue Book, Cd. 2208, Article of Sir K. E. Digby, Yale Law Journal, May, 1908, pp. 485–98). The bulletins of the United States Bureau of Labor from time to time contain summaries of foreign labor laws, including laws of social insurance. Bulletin 74 (1908) reports foreign workmen's compensation acts.

Probably the most important publication on accident insurance is the three volume *Handbuch*[1] issued by the Imperial Insurance Office in Berlin (3d ed., 1909–1910). This work presents the legal and administrative features of accident insurance, the decrees and decisions of the Insurance Office, and the model regulations as published by the *Bundesrat* for the operation of certain industries and for the prevention of accidents. Prof. Robert Piloty[2] published an important work in

[1] Germany, Reichs-versicherungsamt. Handbuch der unfallversicherung . . . die Reichsunfallversicherungsgesetze dargestellt von mitgliedern des Reichs-versicherungsamts nach den akten dieser behörde. 3d ed. Leipzig, Breitkopf & Härtel, 1909–10. 3 v.

[2] Piloty, Rob. Das reichs-unfallversicherungsrecht. Würzburg, Hertz, 1890–93. 3 v.

1890 on the history and operation of the accident insurance laws. Dr. Woedtke [1] is the author of a useful commentary on the Industrial Accident Insurance Law. The fifth edition by Caspar was published in 1901.

The Invalidity and Old Age Insurance Law (*Invalidenversicherungsgesetz*) was first passed on June 22, 1889, and was amended in important particulars by the new act of July 13, 1899. The law in Germany is based on the contributory plan, by which the insured person and his employer pay the principal part of the cost of the pension, although the State adds a liberal subsidy from the national treasury. A translation of the amended act of July 13, 1899, appeared in the British Series of Diplomatic and Consular Reports and is designated as No. 518 of the Miscellaneous Series of 1899. This translation, preceded by a succinct statement of the main provisions of the act, was reprinted in Bulletin 91 (November, 1910) of the United States Bureau of Labor, pages 966–1002. An account of the invalidity and old age pensions in Germany was appended to the report of the Gainsborough Commission on "Life and labour in Germany" (London, 1907). An important commentary on the act of July 13, 1899 was written by Drs. Gebhard [2] and Düttman, second edition, 1901, with supplement 1906. Another recent treatment of the subject is undertaken by Dr. K. Trutzer.[3]

On April 2, 1909, the imperial chancellor proposed certain changes in the Accident, Sickness and Invalidity Insurance Acts. These proposed reforms are reported on pages 1052–1058

[1] Woedtke, Erich von. Unfallversicherungsgesetz. In der fassung des gesetzes, betreffend die abänderung der unfallversicherungsgesetze, vom 30. juni 1900 als Gewerbe-unfallversicherungsgesetze neu bearb. von F. Caspar . . . Berlin, G. Reimer, 1901. 722 p.

[2] Gebhard, H. u. Düttman, A. Kommentar zum invalidenversicherungsgesetz. 2nd ed. Altenburg, St. Geibel, 1901. 879+358 p. Supplement 1906.

[3] Trutzer, K. Invalidenversicherung. Reichsgesetz vom 13 July 1899. 2nd ed. Ansbach, C. Brügel & Sohn, 1907. 885 p.

(accident), 1211–1216 (sickness), and 1399–1407 (invalidity) of the Twenty-fourth Annual Report (1909) of the United States Commissioner of Labor. These proposed changes have now been to a large extent incorporated in the new Insurance Code (*supra*). A small work by Prof. Stier-Somlo [1] of Bonn, dealing with the latest developments of the law for the protection of workmen has recently been published.

Up to the present time there is no imperial or State system of insurance against unemployment. At present, relief against unemployment is undertaken by three different classes of institutions: first, those subsidized by municipalities; second, those created by employers for their own establishments; and third, those conducted by trades unions and similar organizations. An excellent discussion of the subject of unemployment insurance in Germany appears in the Twenty-fourth Annual Report (1909) of the Commissioner of Labor, pages 1444 et seq. An important contribution on unemployment insurance and other phases of the subject of unemployment was prepared by W. D. P. Bliss under the title *What is done for the unemployed in European countries*. Among other countries, Germany is given a prominent place. The monograph appears in Bulletin 76, May, 1908, of the United States Bureau of Labor, pages 741–934. A bibliography of unemployment and the unemployed was compiled by F. I. Taylor (London, King, 1909). A useful discussion of the questions relating to unemployment was published by Prof. M. Wagner, *Beiträge zur frage der arbeitslosen-fürsorge in Deutschland* (Berlin, 1904).

INDUSTRIAL CODE AND LABOR LAWS

In close relation to these laws for the protection of workmen is the general Industrial Code (*Gewerbeordnung*), regu-

[1] Stier-Somlo, F. Die neueste entwickelung des deutschen gewerbe u. arbeiterschutzrechts. Nürnberg, U. W. Sebald, 1910. 114 p.

lating the conditions and activities of tradesmen and the working class as a whole. This code contains the greater portion of the labor laws of the German Empire. The Industrial Code was first enacted on June 21, 1869, as a law of the North German Federation. In 1871 and 1872 it was introduced into the various States of the Empire, with the exception of Alsace-Lorraine, where it went into effect in 1887. Keeping pace with the constant growth in the industrial development of Germany, important amendments to the Industrial Code have been enacted. The years 1890 and 1891 witnessed a great number of laws for the protection of the laboring classes. Industrial courts were established by the law of July 29, 1890. On March 30, 1903, an important act for the protection of children and the regulation of child labor was passed, and another important act of January 7, 1907, applied to conditions in the building trades. The original code, therefore, has been greatly amended. The code with its amendments of May 30, and July 12, 1908, is a very comprehensive one, embodying regulations concerning the operations of all kinds of industrial enterprises, especially treating of the relations between employer, employed, and the public. It includes within its provisions all handicraftsmen, skilled laborers, and factory workers; persons engaged in commerce and trade and transportation enterprises of all kinds; and, in general, individuals and institutions serving the public, such as innkeepers, barbers, groceries, sanitariums, etc. For the code to apply, the occupation, as a rule, must be for profit, or used as a means of livelihood. The code excludes from its provisions industries engaged in working the natural products of the land or sea, for example, fishing, mining, agriculture, forestry, etc.; nor does it apply to those engaged in the fine arts, such as photographers and architects, nor artists generally, such as actors, musicians, etc. Educators, physicians, lawyers and public officers are

excluded, as are also domestic servants. The code is divided into the following parts: General provisions; permanently located industrial occupations, including their administration and regulation and general legal position; industries which require travel, their administration, regulation, etc.; markets and fairs; taxation, guilds and unions; workmen's associations; industrial workers of all kinds, including apprentices, women and children in factories, etc. (though here the provisions of the Commercial Code also have some application); workmen's relief and savings bank societies; and lastly, criminal provisions.

The Federal Council (*Bundesrat*) has the power to draw up detailed regulations for the management and operation of particular industries. These orders and regulations are published in the *Reichsgesetzblatt*. Where the *Bundesrat* fails to exercise its power, the central authorities of the State (*Landes-Centralbehörden*) may draw up the regulations for their local industries. These are published in the Official Gazette (*Regierungsblatt*) of the State.

The labor laws of Germany were discussed by Dr. W. W. Willoughby in an interesting monograph in Bulletin 27 (March, 1900) of the United States Bureau of Labor, pages 314–379. A British parliamentary commission appointed to study foreign labor conditions published the results of its investigations in 1893. They appear in the Parliamentary Papers under the head, *Royal Commission on Labor; Foreign Reports*. The fifth volume deals with the labor conditions and laws of Germany. The child labor legislation of foreign countries is discussed in an important monograph by Prof. C. W. A. Veditz, published in Bulletin 89 (July, 1910) of the United States Bureau of Labor. Germany is dealt with in pages 231 to 312. Pages 275 to 397 of the Twelfth Special Report of the United States Commissioner of Labor on *Coal Mine Labor in Europe*, deals with mine labor and mining

laws of Germany. Bulletin 20 of the United States Bureau of Labor deals with railway labor in Europe; one section of the monograph is devoted to conditions in Germany. An English translation of the more important foreign labor laws may be found in the English edition, published since 1906, of the Bulletin of the International Labor Office.

The leading work on the Industrial Code, is the exhaustively annotated commentary by Dr. Robert von Landmann,[1] with the cooperation of Gustav Rohmer. It is published in two volumes, the sixth edition of which appeared in 1911. Another popular work on the subject is that by Judge Ernst Neukamp,[2] the ninth edition of which was published in 1910.

Industrial courts for the adjudication of questions between such kinds of employers and employees as are covered by the Industrial Code were established by the act of July 29, 1890, amended June 30, 1901 (promulgated Sept. 29, 1901). The operation of "industrial courts of Europe" is described by Miss Sumner in Bulletin 98 of the United States Bureau of Labor. A large part of the monograph deals with the jurisdiction and procedure of the industrial courts of Germany. A good commentary on the act of 1890, covering as well the related statutes concerning fees and other matters, was published in 1902 by Dr. M. von Schulz,[3] president of the industrial court at Berlin. Aside from general collections of decisions, the decisions of these industrial courts appear in two publications, a monthly periodical entitled *Das Gewerbegericht*, and the *Mitteilungen des gewerbegerichts Berlin* (*Soziale praxis*, *Centralblatt für Sozialpolitik*, which report the decisions

[1] Landmann u. Rohmer. Kommentar zur gewerbeordnung für das Deutsche Reich. 6th ed. . . . München, C. G. Beck, 1911. 2 v.

[2] Neukamp, Ernst. Gewerbeordnung für das Deutsche Reich. 9th ed. Tübingen, Mohr, 1910. 684 p.

[3] Schulz, M. von. Gewerbegerichtsgesetz in der fassung der bekanntmachung vom 29. september, 1901, erläutert. Berlin, O. Häring, 1902. 297 p.

of the principal court, at Berlin). The decisions are not officially reported, as in Austria.

The general position of the workman in his relation to the Industrial Code, the laws for compulsory insurance in its various branches, and other relevant matters contained in the Civil and Commercial Codes, are often treated under the general title "Workmen's law" (*Arbeiterrecht*) or labor contract (*Arbeitsvertrag*).

An important feature of German labor contracts is the so-called *Tarifvertrag*, or collective agreement between the workmen in a certain trade and their employer, the object of which is to regulate the conditions of the employment, wages etc. The legal and economic operations of this kind of joint agreement are exhaustively treated in an official publication of four volumes entitled *Der tarifvertrag im Deutschen Reich*, compiled and edited in the *Kaiserliches Statistisches Amt* (Berlin, Heymann, 1906–1908). They constitute Nos. 3, 4, 5 and 8 of the *Beiträge zur arbeiter-statistik*. In a recent French article "Le contrat collectif de travail et les auteurs allemand" (*Revue trimestrielle de droit civil*, July–September, 1911, vol. 11, pp. 581–601), Dr. Jean Leroy discusses a recent Belgian work by Valère Claes [1] on the subject of the collective labor contract in Germany. Attention is called to the work because it discusses critically and from a comparative point of view, the opinions and doctrines of the leading German authorities on the subject. The German workman is employed either on a piece wage (*Akkordvertrag*) or on a time wage (*Zeitlohn*). Both types of labor contract, individual and collective, are treated in an important work by Paul Wölbling [2] (1908). The leading work on the general subject of the labor contract is the two

[1] Valère Claes. Le contrat collectif de travail. Sa vie juridique en Allemagne. Bruxelles, A. Dewit, 1910.

[2] Wölbling, Paul. Der akkordvertrag u. der tarifvertrag. Berlin, Guttentag, 1908. 482 p.

volume edition by Phillip Lotmar [1] entitled *Der arbeitsvertrag*, the second volume of which was published in 1908. Arthur Stadthagen,[2] a member of the German *Reichstag*, is the author of a popular work on labor law. All aspects of the rights and duties of the workman in Germany are dealt with. A large volume, edited by F. Nelken,[3] contains a critical discussion and commentary on the laws for the protection of skilled workmen and laborers in Germany, particularly as set forth in titles 6 and 7 of the Industrial Code. A dictionary of labor law by Elster,[4] published in 1910, is useful for ready reference. A supplement covering the Insurance Code has just been published (1912).

CIVIL PROCEDURE

Code of Civil Procedure

Civil procedure in Germany is governed by the Code of Civil Procedure (*Zivilprozessordnung*) and the Judiciary Act (*Gerichtsverfassungsgesetz*), both enacted in 1877. A draft Code of Civil Procedure was first prepared in 1870 by a parliamentary commission. In 1871 a new commission of ten jurists was apppointed to prepare the draft of a code for the entire Empire. After the commission had reported its draft in March, 1872, it was submitted to the *Bundesrat*, and later to the *Reichstag*, and on January 30, 1877, it was promulgated as the Code of Civil Procedure of the Empire. Three days previously, a Judiciary Act, revising the system of courts in the Empire, had also been enacted into law. Both these

[1] Lotmar, Ph. Der arbeitsvertrag. Leipzig, Duncker & Humblot, 1902–08. 2 v.

[2] Stadthagen, Arthur. Das arbeiterrecht, erläutert. 4th ed. Stuttgart, J. G. Dietz nachf, 1904. 626 p.

[3] Nelken, F. Die deutschen handwerker- und arbeiterschutz-gesetze (titel VI und VII der Gewerbeordnung) nebst den reichsrechtlichen ausführungsbestimmungen. Mit erläuterungen hrsg. von F. Nelken. Berlin, J. Springer, 1901. 1176 p.

[4] Elster, Alexander. Lexikon des arbeiterrechts. Jena, Gustav Fischer, 1910. Suppl. 1912.

important statutes were amended on May 17, 1898, as part of the general legislative reform movement of that year. The draft of a new code for the organization of the courts is now before the *Bundesrat*, and the reform movement (*infra*) indicates that within a few years a draft of a new code of civil procedure will be prepared.

A number of statutes bear close relation to the Code of Civil Procedure, the principal one of which is the Judiciary Act just mentioned. Procedure in bankruptcy cases is regulated by the Bankruptcy Act of 1877, as amended 1898. The act of July 1, 1878, regulating the practice of attorneys at law (*Rechtsanwaltsordnung*) and the act of July 7, 1879, regulating attorneys' fees (*Gebührenordnung für Rechtsanwälte*), are both of importance. The act of June 18, 1878, regulating costs in courts of justice (*Gerichtsgebührengesetz*) also directly concerns civil procedure.

The Code of Civil Procedure is divided into the following sections: Book I, general provisions, courts and their jurisdiction; Book II, procedure in district and superior courts; Book III, appeal and review; Book IV, re-trial and rehearing; Books V–VII, procedure in special matters such as negotiable instruments, matrimonial causes, and summary claims; Book VIII, execution of judgments; Book IX, protection against unknown claims caused by lost instruments, etc.; Book X, arbitration. The code consists of 872 articles.

Judiciary Act

The Judiciary Act provides for the establishment, distribution and jurisdiction of the courts. On the civil side, four grades of courts are provided for; (1) district or lower courts (*Amtsgerichte*); (2) superior courts (*Landesgerichte*), certain sections of the *Landesgerichte* also acting as commercial courts (*Handelsgerichte*); (3) courts of appeal (*Oberlandesgerichte*); and (4) the imperial supreme court (*Reichsgericht*) at Leipzig. This last court was the successor of the *Oberhandelsgericht*, a tribunal which had been established in 1871, largely because

of the apprehended danger that the Bills of Exchange Act and Commercial Code which had been made uniform, would be broken up into several systems by conflicting interpretations in State courts. The jurisdiction of this highest tribunal was also considerably increased. Bavaria occupies an exceptional position in its highest court, in that it has established an *Oberstlandesgericht* having appellate jurisdiction in civil cases over the *Oberlandesgericht*, which appellate jurisdiction for the rest of the Empire resides in the *Reichsgericht*.

An excellent article on the German Code of Civil Procedure was published by H. A. D. Phillips in the Law Magazine and Review, fourth series, volume 21 (1895–6), pages 267–285. He traces German civil procedure from its origin in the Salic law, through feudal procedure, to the present code (before its 1898 amendment). He describes the different systems in force before the new code was enacted and gives a summary of the principal features of this code, for comparative purposes citing the French, Italian, and Indian codes. In the course of two articles by Simeon E. Baldwin, the first of which was published in the Michigan Law Review, volume 8 (November, 1909), pages 30–38, a law suit in the lowest court of first instance (*Amtsgericht*) is described in some detail; in the second article, published in the Yale Law Journal, volume 19 (December, 1909), pages 69–79, a law suit is described in the *Landesgericht* or superior court, where the parties are represented by attorneys. The basis for both articles is the little work of Dr. Hermann Meyer, *Anleitung zur prozesspraxis in beispielen an rechtsfällen* (8th ed., Berlin, Vahlen, 1910).

Judiciary Act

Grades and jurisdiction of criminal courts are likewise provided for in the Judiciary Act. The lowest court is the *Schöffengericht*, consisting usually of one professional and two lay judges; next in order follow the *Landesgericht* on its criminal side (*Strafkammer*); the *Schwurgericht* or jury court, a division of the *Landesgericht;* the *Oberlandesgericht* or court of

appeal; and the *Reichsgericht* or Supreme Court. Two able articles on the German judiciary by Prof. J. W. Garner were published in the Political Science Quarterly, volume 17 (1902), pages 490–514, and volume 18 (1903), pages 512–530. The first of these articles gives a general history of the Act, its constitutional position, and a detailed sketch of the judicial hierarchy. The second discusses general phases of German judicial service and procedure, and judicial power, or the constitutional rights of the courts. Important articles by J. J. Cook, entitled, "Judicial system in Germany" appeared in the Juridical Review, volume 1 (1889), pages 70–80, 184–192, 298–306. They contain a descriptive account of the bench and bar in Germany, the courts and their competence, and a detailed description of each court both of civil and criminal jurisdiction. Judge Karl von Lewinski, who became favorably known to many American lawyers during the two years he spent in this country studying American procedure in the interest of Leske-Löwenfeld's *Rechtsverfolgung im internationalen verkehr*, published an interesting article on "Courts and procedure in Germany." It appeared first in the Illinois Law Review, volume 5 (November, 1910), pages 193–202, and was subsequently reprinted in the American Legal News, Law Student's Helper and Canadian Law Times. The judicial system of Germany was discussed in an article by Richard Hudson, published in the Michigan Law Review, volume 1 (1902), pages 121–126. The subject was also discussed by J. Kopelke in an article published in the Albany Law Journal, volume 21 (1880), pages 66–69, 167–168. It may not be amiss here to mention an instructive French article containing an exhaustive analysis of the Judiciary Act by L. Dubarle in the Bulletin de la Société de Législation Comparée, volume 5 (1876), pages 103–150. M. Dubarle[1] also translated and

[1] Dubarle, L. Code d'organisation judiciaire allemand (27 janvier 1877). Paris, Imprimerie nationale, 1885. 2 v.

edited the Judiciary Act for the French Government, which published the work in two volumes. Its historical introduction and its notes command special notice. In an article published in the Journal of the Society of Comparative Legislation, volume 1, new series (1899), pages 75–80, Julius Hirschfield, under the title "A few legal facts from Germany," describes German judicial organization, procedure in appeal cases, court costs, fees, and related questions. In a short article by Julius Hirschfeld, entitled "German courts at work," printed in the July, 1911 number of the Journal of the Society of Comparative Legislation (pp. 149–56), there is presented a succinct account of German judicial organization, with special reference to Prussia. It includes brief judicial statistics for 1909, a few salient points of procedure and the relation of the bar to the administration of justice. Occasional comparisons with the English system are made. C. W. Ernst in an article entitled "Law reforms in Germany," which appeared in the American Law Review, volume 18 (1884), pages 801–813, discusses the jurisdiction of the German law courts under the Judiciary Act of 1877, emphasizing, incidentally, the position of the legal profession in its relation to the courts.

Code of Civil Procedure

A convenient annotated edition of the Code of Civil Procedure was published by Judge Hugo Freudenthal[1] of the court of appeal. He takes account of the amendments of 1898, together with the statutes of June 5, 1905 and June 1, 1909, which latter act, among other important changes, increased the jurisdiction of the district courts and amended the regulations as to attorneys' fees. A book introducing students to the practise of civil procedure was written by Prof. Hermann

[1] Freudenthal, Hugo. Civilprozessordnung in der fassung der bekanntmachung vom 20. mai 1898 und der gesetze vom 5. juni 1905 und 1 juni 1909, nebst dem Einführungs-gesetz. 3rd ed. München, C. G. Beck, 1910. 1064 p.

Fitting,[1] of Halle, the twelfth to thirteenth edition of which was published in 1907, with a supplement treating the amendment of June 1, 1909. The Code of Civil Procedure was also translated and published under the direction of the French Government; the work is edited, with notes, by Glasson,[2] Lederlin, and Dareste.

Several excellent commentaries on the code have made their appearance. The one most frequently used is that known as the *Gaupp-Stein Kommentar*.[3] It appeared originally in 1899; in 1910 the first volume of the tenth edition was published. New editions of this commentary, as of the other standard works in Germany, appear every few years. Another well-known commentary is that by Prof. Seuffert,[4] of Munich, the eleventh edition of which has recently been issued. Another popular commentary in Germany, the ninth edition of which appeared in 1910, is edited by Struckmann[5] and Koch, presiding judge of the court of appeal, and privy councillor, respectively, assisted by a number of other judges. Dr. Julius Petersen[6] is the author of a commentary (5th ed. by Remele and Anger, 1904–1906; supplement, 1910), which

[1] Fitting, Hermann Heinrich. Der reichs-civilprozess. 12 und 13 ed. Berlin, J. Guttentag, 1907. 798 p. Die neuerungen der novelle zur civilprozessordnung vom 1. juni 1909, als nachtrag. Berlin, J. Guttentag, 1909. 53 p.

[2] Germany. Code de procedure civile pour l'empire d'Allemange (30 janvier 1877), traduit et annoté par E. Glasson . . . E. Lederlin . . . F. R. Dareste . . . Paris, Imprimerie nationale, 1887. 354 p.

[3] Gaupp, Ludwig. Die civilprozessordnung für das Deutsche Reich. Auf der grundlage des kommentars von L. Gaupp, erläutert von Friedrich Stein. 10th ed. Tübingen, J. C. B. Mohr, (P. Siebeck) 1910–1912. 2 v.

[4] Seuffert, Lothar. Kommentar zur civilprozessordnung. 11th ed . . . München, C. H. Beck, 1910–11. 2 v.

[5] Struckmann, J. & Koch, R. Die zivilprozessordnung für das Deutsche Reich. 9th ed. Berlin, Guttentag, 1910. 1210 p.

[6] Petersen, Julius. Die civilprozessordnung für das Deutsche Reich. 5th ed. bearb. von Ernst Remele . . . (und) Dr. Ernst Anger . . . Lahr, M. Schausenburg, 1904–06. 2 v. Supplement, 1910.

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contains prolific annotations, notes and discussions, with frequent references to the history and sources of the various sections of the code; decisions of State courts are also noted.

Several well-known treatises on civil procedure deserve notice. Prof. J. J. Planck [1] of Munich is the author of a work which gained high scholarly recognition, but is now slightly antiquated. Historically and as a philosophical work it is important. Engelmann's [2] two volume *Geschichte und system* is a prominent work on the history of civil procedure. The second volume is to be translated into English. (See footnote, p. 46.) An important treatise on the subject is that by Prof. R. Schmidt,[3] of Freiburg. In its supplement of 1910, it covers the district court amendment of June 1, 1909, and the supreme court amendment of May 22, 1910. These were both amendments to the Judiciary Act, that of 1910 simplifying procedure in appeals to the supreme court. A scholarly work on the law of civil procedure is from the pen of Prof. Konrad Hellwig,[4] of Berlin. Up to 1909, two volumes and the first part of volume 3 had been published. It examines the more difficult problems of civil procedure and is valuable for its critical discussions. Prof. Hellwig [5] has also published an interesting work on procedure under the title *Anspruch und klagrecht.* A second reprint edition of this work appeared in 1910. The history

[1] Planck, Johann Julius Wilhelm von. Lehrbuch des deutschen civilprozessrechts . . . Nördlingen, C. H. Beck, 1887–1896. 2 v.

[2] Engelmann, A. Der civilprozess; Geschichte und system. Breslau, Koebner, 1889–1895. 2 v.

[3] Schmidt, Richard Karl Bernhard. Lehrbuch des deutschen zivilprozessrechts. 2d ed. Leipzig, Duncker & Humblot, 1906. 1113 p. Die neuerungen im zivilprozessrecht. Nachtrag zur zweiten auflage. Leipzig, Duncker & Humblot, 1910. 100 p.

[4] Hellwig, Konrad. Lehrbuch des deutschen civilprozessrechts, Leipzig, A. Deichert nachf., 1903–1907. 1–3 v.

[5] Hellwig, K. Anspruch u. klagrecht. 2d ed. Leipzig, Deichert, 1910. 530 p.

of civil procedure has been dealt with in a number of articles edited in a two volume edition by Prof. Kohler.[1] A work dealing with questions of procedural reform in Germany was published by Dr. W. Peters.[2] It is a comparative study of English and German procedure, in the course of which a survey is presented of German procedure and its defects.

The German reform discussions centering around the interpretation and application of the written law by the judge (*Rechtsanwendung*) have given rise to many thoughtful and critical monographs, among which those by Adickes and Düringer deserve special mention. A review of Adickes' *Zur verständigung über die justizreform* in the Journal of Criminal Law, volume 2, July 1911, page 311, gives the principal ideas of that noted reformer. Attention is again directed to Prof. Pound's article (Annual Bulletin of Comparative Law Bureau, 1908, pp. 31–36), in which the attitude of the three current schools of legal thought on this question of procedural reform is described (*supra*, p. 33). As an example of the thoroughness with which German legislation is undertaken we may mention the proposed reform in civil procedure. In preparation for this undertaking a seven volume work on the law of civil procedure in the more important States of the world is to be prepared by Prof. Jos. Kohler, Prof. Mendelssohn-Bartholdy, Prof. Pagenstecher, and Prof. Wach.

The jurisdiction of German courts is strictly defined. The procedure and circumstances under which the assistance of other German and foreign courts may be invoked in the administration of justice is known under the name of *Rechtshilfe*. It includes such matters as service of process in

[1] Beiträge zur geschichte des bürgerlichen rechtsganges, hrsg. v. Jos. Kohler. Berlin, E. Weber, 1904–1907. 2 v.

[2] Peters, Wilibald. Das englische bürgerliche streitverfahren und die deutsche zivilprozessreform. Berlin, F. Vahlen, 1908. 149 p.

foreign jurisdictions, the issuance of letters rogatory and the effect and execution of foreign judgments. These matters are regulated in part by section 13 of the Judiciary Act of 1877, and by section 2 of the act of May 17, 1898, concerning noncontentious jurisdiction. As to foreign courts, the matter is largely regulated by the treaties of the German Empire, especially by the Hague conventions of November 14, 1896 and July 17, 1905, on civil procedure and by the general principles of private international law as found in the Introductory Act to the Civil Code. Consular jurisdiction is also of importance in this connection. The entire matter concerns particularly the legal position of foreigners before the courts. The leading work on the subject is the *Handbuch des rechtshilfeverfahrens* by Dr. Hans Delius[1] (fourth edition, 1911), founded on the work of Ferdinand Böhm, which was published under the same general title in 1886. Merchants' courts (*Kaufmannsgerichte*), for the arbitration of questions arising between merchants were established by the law of July 6, 1904. A commentary on this law was published in 1905 by Dr. M. von Schulz.[2]

Execution against movables is governed by Book VIII of the Code of Civil Procedure. According to section 869 of this code, execution against real property is to be governed by a special statute. This statute was enacted on March 24, 1897, and promulgated with the other procedural codes and laws on May 20, 1898; it follows very closely the provisions of the earlier Prussian statute. An important commentary on the act, which concerns forced sale (*Zwangversteigerung*) and sequestration (*Zwangsverwaltung*) in execution proceedings against real property is that by Judge Theodor

[1] Delius, Hans. Handbuch des rechtshilfeverfahrens im Deutschen Reiche sowie in und gegenüber dem auslande. 4th ed. Nürnberg, Sebald, 1911. 539 p.

[2] Schulz, M. v. Das reichsgesetz, betreffend kaufmannsgerichte vom 6 juli 1904, erläutert. Jena, G. Fischer, 1905. 385 p.

Wolf.[1] Many regulations and details of procedure in the matter of execution were left to State legislation, and the author in his commentary takes note of the Prussian, Bavarian and Saxon regulations under the appropriate paragraphs of the imperial statute. The Prussian *Ausführungsgesetz* is particularly commentated. Another useful commentary with an historical introduction, tracing the subject from Roman law to the present imperial statute, was prepared by Prof. Otto Fischer,[2] of Breslau; the second edition appeared in 1910. Prussian law is also given a prominent place in this work. A commentary frequently used by lawyers is that of Dr. P. Jäckel,[3] the fourth edition of which by G. Güthe was published in 1911. One of the best systematic treatments of the subject is contained in a work by F. Kretzchmar.[4]

Costs and Fees

The law of costs is naturally associated with the law of procedure. The law on this subject is governed by four statutes dealing, respectively, with costs and fees for witnesses and experts, court costs, sheriffs' fees, and attorneys' fees. The present statutes regulating court costs came into force on January 1, 1900. They were substantially amended by an act of June 1, 1909, which became effective April 1, 1910. The law on the subject, including its new amendments, is treated in two commentaries, the one by Dr. Pfafferoth,[5] of the Department of Justice, which reached a ninth edition at the

[1] Wolf, Theodor. Das reichsgesetz über die zwangsversteigerung und zwangsverwaltung, Erläutert. 3d ed. Berlin, C. Heymann, 1909. 668 p.

[2] Fischer, Otto. Die gesetzgebung, betreffend die zwangsvollstreckung in das unbewegliche vermögen im reiche und in Preussen; bearb. von Dr. O. Fischer . . . und Dr. L. Schaefer . . . Berlin, J. Guttentag, 1902. 754 p.

[3] Jäckel, P. Kommentar zum zwangsversteigerungsgesetz. 4th ed., by G. Güthe. Berlin, Vahlen, 1911. 875 p.

[4] Kretzchmar, F. Das reichsgesetz über die zwangsversteigerung u. die zwangsverwaltung. Leipzig, Dieterich, 1904. 434 p.

[5] Pfafferoth, Carl. Das deutsche gerichtskostenwesen. 9th ed. Berlin, C. Heymann, 1909. 523 p.

end of 1909; the other by Otto Rittmann,[1] assessor of costs in the Alsace Ministry of Justice, which appeared in the same year. The question of costs in every form of action is dealt with. The procedure for establishing and fixing costs, as well as the amended statute for regulating the fees of attorneys is the subject of an important work by Dr. W. Willenbücher,[2] judge of the court of appeal. The seventh edition by Simeon and Fischer was published in 1910. The amendment of the original act of 1879 to regulate attorneys' fees, including the acts of June 1, 1909, and May 22, 1910, receive attention. The various German States retain jurisdiction over certain detailed regulations concerning attorneys' fees, and the State statutes, which really supplement the imperial legislation on the subject, are also covered by the work. The chapters on the imperial law are in the form of a commentary.

Attorneys at Law

An article by Dr. Otto Simon, giving a brief account of the social position of the German lawyer and his code of ethics, appears in the Green Bag, volume 22 (July, 1910), pages 391–393, and is reprinted in the American Legal News of that month and in the Law Student's Helper for September. The leading commentary on the statute governing attorneys-at-law, is that edited by Adolf and Max Friedländer,[3] which appeared in 1908.

Two important periodicals dealing with civil procedure are the *Archiv für die civilistische praxis*,[4] founded in 1818, and

[1] Rittmann, Otto. Das deutsche gerichtskostengesetz, erläutert . . . 4th ed. Mannheim und Leipzig, J. Bensheimer, 1909. 648 p.

[2] Willenbücher, W. Das kostenfestsetzungsverfahren u. die deutsche Gebührenordnung für rechtsanwälte nebst die landesgesetzlichen vorschriften in Preussen, Bayern, Sachsen, Württemberg u. Baden. 7th ed., by Siméon & Fischer. Berlin, Müller, 1910. 349 p.

[3] Friedländer, A. & M. Kommentar zur rechtsanwaltsordnung vom 1. juli 1878. München, J. Schweitzer, 1908. 371 p.

[4] Archiv für die civilistische praxis, edited by Heck, Pumelin, Wondt, Bülow & Kohlhaas. Tübingen, Mohr, 1818 and cont.

the *Zeitschrift für deutschen zivilprozess*,[1] now edited by Schultzenstein and Vierhaus, volume 1 of which appeared in 1879.

NONCONTENTIOUS JURISDICTION

Under this term the Germans include such action by public authorities, either courts or notaries, as is necessary to give official sanction to legal rights or to create them. It may be called ex parte procedure. It is invoked in such cases as the following: the appointment of a guardian or administrator, the probate of a will, the registration of documents such as deeds and mortgages and other real estate transactions, the registration of various kinds of contracts, such as marriage contracts and commercial agreements, the registration of trademarks and designs, and in a great number of other special cases which may be grouped under the general head of the judicial authentication of legal instruments. In these matters, the court usually acts in an administrative capacity.

Noncontentious jurisdiction is provided for in the Act of May 17, 1898, in the Land Registry Act of March 24, 1897 (*Grundbuchordnung*), in the Civil Code (the authentication of wills), in the Commercial Code (in the matter of registering certain kinds of associations), in the Trademark Act, and in other statutes. The jurisdiction is vested almost exclusively in the hands of the district courts, with appeal to the Superior courts, and for error in law, to the court of appeal, whose jurisdiction is final. An excellent article on the subject of noncontentious jurisdiction in Germany was published by Judge Walter Neitzel, a collaborator of Judge von Lewinski in the Leske-Löwenfeld publication (*supra*, p. 143). It appears in the Harvard Law Review, volume 21 (1908), pages 476–494. Probably the best commentary on the subject is

[1] Zeitschrift für deutschen zivilprozess und das verfahren in angelegenheiten der freiwilligen gerichtsbarkeit . . . 1879–1910. 40 v. Berlin, C. Heymann, 1879 and cont.

that by Schultze-Görlitz [1] and Oberneck, which annotates fully both the imperial and the Prussian law as enacted in the *Ausführungsgesetz* of September 21, 1899. J. Rausnitz [2] published a useful commentary on the subject which appeared in 1900. A handy annotated edition of the law was prepared by Dudek [3] and Lindemann, the second edition of which appeared in 1908. All the sections relating to noncontentious jurisdiction in the other codes and statutes which have been mentioned, as well as the Prussian *Ausführungsgesetz* receive careful attention.

Notarial law bears a most intimate relation to noncontentious jurisdiction. Form books for the notary and administrative officer in noncontentious matters are published frequently in new editions. The one in most general use is the two volume work by Jastrow.[4] Two other form books of good reputation are edited respectively by Weissler[5] and by Goldmann and others.[6]

The decisions in matters of noncontentious jurisdiction together with land registry decisions are published in a volume edited annually by the Department of Justice.[7]

[1] Schultze-Görlitz, R. u. Oberneck, H. Gesetz über die angelegenheiten der freiwilligen gerichtsbarkeit. Berlin, Heymann, 1900. 2 v.

[2] Rausnitz, J. Das reichsgesetz über die angelegenheiten der freiwilligen gerichtsbarkeit. Berlin, F. Vahlen, 1900. 384 p.

[3] Dudek, H. & Lindemann, O. Das reichsgesetz über die angelegenheiten der freiwilligen gerichtsbarkeit, unter mitwirkung von Eugen Ebert . . . erläutert von Heinrich Dudek . . . (und) Otto Lindemann . . . 2d ed. Breslau, M. & H. Marcus, 1908. 535 p.

[4] Jastrow, Hermann. Formularbuch und notariatsrecht. Im anschluss an das C. F. Koch'sche Formularbuch, bearb. von Hermann Jastrow . . . 15th ed. Berlin, J. Guttentag, 1910. 2 v.

[5] Weissler, Adolf. Formularbuch für freiwillige gerichtsbarkeit, . . . 12th ed. Berlin, C. Heymann, 1911. 444 p.

[6] Formularbuch für die freiwillige gerichtsbarkeit. Auf veranlassg. des Berliner Anwaltvereins hrsg. v. E. Goldmann, E. Heinitz, W. Loewenfeld, J. Rausnitz. 3 ed. Berlin, C. Heymann, 1911. 974 p.

[7] Entscheidungen in angelegenheiten der freiwilligen gerichtsbarkeit u. des grundbuchrechts. Hrsg. im Reichsjustizamt. 11 v. and index to v. 1–10. Berlin, Puttkammer & Muhlbrecht, 1900 and cont.

CRIMINAL LAW

Criminal law by customary legal classification is a division of public law. However, as works dealing with public law usually exclude criminal law from treatment it is considered advisable to discuss criminal law at this point.

The Romans made no great distinction between civil and criminal law. Nevertheless they were far advanced in their notions of public prosecution and punishment of crimes, and the penetration of their ideas into ecclesiastical law gave definite shape to the theory that crime was a sin against God. German criminal law consisted in the Middle Ages of the old Roman law developed and remolded by the Italian jurists to suit the needs of more modern times. This period of development reached a definite climax in the publication by the Baron of Schwarzenberg of the *Constitutio Criminalis Bambergensis* which in turn became the model for the *Constitutio Criminalis Carolina*, the criminal code of Emperor Charles V, enacted in 1532. This code was the fundamental criminal law of Germany up to the nineteenth century. It has exercised a permanent influence on German criminal law. The best edition of both the Bambergensis and the Carolina Codes is that by Profs. Kohler [1] and Scheel, published in 1900. A work dealing with the sources of criminal law apart from the Carolina Code was edited by Prof. Kohler [2] and published in Mannheim (1907–1909). An excellent history of German criminal law was published by the celebrated Prof. von Bar,[3] of Göttingen. His *Geschichte des deutschen strafrechts* which appeared in 1882

[1] Carolina constitutio criminalis. Die peinliche gerichtsordnung Kaiser Karls V. Kritisch hrsg. von J. Kohler . . . und Willy Scheel . . . Halle, Buchhandlung des Waisenhauses, 1900. 167 p.

[2] Quellen zur geschichte des strafrechts ausserhalb des Carolinakreises. Herausgegeben von Kohler. Mannheim, J. Bensheimer, 1907–1909.

[3] Bar, L. von. Handbuch des deutschen strafrechts. Bd. I. Geschichte des deutschen strafrechts. u. der strafrechts-theorien. v. I. Berlin, Weidmann, 1882. 361 p.

will be translated into English under the auspices of the committee editing the Continental Legal History Series (see footnote, p. 46).

The Penal Code now in force in Germany is that of May 15, 1871 with its amendments. The first draft was published in 1869 and the code itself was finished in 1870 before the Empire was founded. This code was modeled on the Prussian criminal code of April 14, 1851, which was based largely on the maxims of the old Napoleonic Code Pénal of 1810. The first draft of a fresh Penal Code was completed in 1909 and has already been submitted to the public for discussion and criticism. It is probable that within a short time the new penal code will be enacted into law.

A translation of part one of the 1871 code, which includes the first seventy-nine sections, appears in the Law Magazine and Review, New Series, volume 1 (1872), pages 653–667. Three learned articles on the early criminal law and courts of Germany were published in the thirties. Two of these are from the pen of the celebrated authority, Prof. K. I. A. Mittermaier. In an able article in the Law Magazine and Review, volume 15 (1836), pages 119–128, the older literature of criminal law is critically discussed. In the second article by the same author, published in the American Jurist, volume 24 (1840), pages 62–79, the sources of criminal law in Germany and the State codes in existence at that time are discussed and the administration of criminal law compared with that of the United States. In an article in the Law Magazine or Quarterly Review, volume 11 (1834), pages 1–23 there is a discussion of penological theories with a critical account of the older writers on criminal law and their works.

The Penal Code of 1871 was translated into English by Geoffrey Drage[1] (London, 1885). Prof. Wolfgang Mitter-

[1] Drage, G. The criminal code of the German Empire. Translated by Geoffrey Drage. London, 1885. 365 p.

maier, of Heidelberg, while characterizing the translation as able, nevertheless finds the translator guilty of some misconceptions. An excellent account of the criminal law of the German Empire presenting systematically the theories underlying the code and its principles was written by Prof. Wolfgang Mittermaier, of Heidelberg and Berne, the son of the renowned K. I. A. Mittermaier. This article was prepared at the request of S. J. Barrows, commissioner of the United States on the International Prison Commission, and published in the reports prepared for this commission. It appears as House Document 489, Fifty-sixth Congress, second session, pages 81–104 (Washington, Government Printing Office, 1901). The entire criminal legislation of Germany was edited in nine small volumes of text editions by Dr. Justus Olshausen,[1] Federal district attorney. A small but useful annotated edition of the Penal Code, including references to the decisions of the State courts and to the authoritative commentaries was edited by Wilhelm Henle [2] and Franz Schierlinger (2d ed., 1903, with supplement 1907).

The leading commentary on the German Penal Code is that by Justus Olshausen,[3] which reached its eighth edition in 1909–10. Another commentary, very popular with German lawyers, is from the pen of Prof. Reinhard Frank[4]; the eighth to tenth edition was published in 1911. Criminal provisions are scattered throughout many statutes and sections of stat-

[1] Olshausen, Justus. Die strafgesetzgebung des Deutschen Reichs. Textausgabe mit anmerkungen . . . Berlin, F. Vahlen, 1900–1903. 9 v.

[2] Henle, Wilhelm. Das strafgesetzbuch für das Deutsche Reich in seiner gegenwärtigen gestalt. Handausgabe mit erläuterungen von Wilhelm Henle . . . und Dr. Franz Schierlinger . . . 2d ed. Mit nachtrag. München, C. H. Beck, 1903, 1907. 444 p.

[3] Olshausen, Justus. Kommentar zum strafgesetzbuch für das Deutsche Reich. 8th ed., Berlin, F. Vahlen, 1909–10. 2 v.

[4] Frank, Reinhard. Das strafgesetzbuch für das Deutsche Reich. 8–10th ed. Tübingen, J. C. B. Mohr (P. Siebeck), 1911. 671 p.

utes. A special commentary dealing with these incidental penal provisions was edited by Dr. M. Stenglein,[1] a former justice of the supreme court of Germany; it began to appear in its fourth edition in 1909. The principles of German criminal law in concise statement are presented by Prof. Karl Binding,[2] the learned jurist of Leipzig, in his "*Grundriss.*" The history of criminal law from the Carolina Code (1532) to modern times is combined with a summary account of the content of criminal law in its objective and subjective aspects. The work contains extensive bibliographic references.

The leading treatise on criminal law is that by the renowned Prof. Liszt,[3] of Berlin, the eminent authority on criminal law and criminology. The eighteenth edition was published in 1911; a French translation has also just been published by Giard and Brière, of Paris. A work now used in some of the universities of south Germany is the treatise of Prof. H. Meyer,[4] edited by Allfeld, known as the "*Meyer-Allfeld Lehrbuch.*" The seventh edition has recently been issued. Its continued use in preference to the work of Liszt appears to be due to the conflict between Profs. Birkmeyer and Liszt in their theories of criminal law. Prof. Binding[5] is the author of an able treatise on criminal law which was originally a continuation of the fifth edition of his "*Grundriss.*" The last volume of the second edition of the treatise appeared in 1905. Another

[1] Stenglein's Kommentar zu den strafrechtlichen nebengesetzen des Deutschen Reiches. 4th ed. völlig neubearbeitet von Ludwig Ebermayer, Franz Galli, Georg Lindenberg. Berlin, Otto Liebmann, 1909–1911. 2 v. and cont.

[2] Binding, Karl. Grundriss des deutschen strafrechts, allgemeiner teil . . . 7th ed. Leipzig, W. Englemann, 1907. 271 p.

[3] Liszt, Franz von. Lehrbuch des deutschen strafrechts. 18th ed. Berlin, J. Guttentag, 1911. 689 p.

[4] Meyer, H. Lehrbuch des deutschen strafrechts, bearbeitet von Allfeld. 7th ed. Leipzig, Deichert, 1911.

[5] Binding, Karl. Lehrbuch des gemeinen deutschen strafrechts, besonderer teil. Leipzig, W. Engelmann, 1902–1905. 2 v.

good treatise on German criminal law is by Prof. Finger,[1] of Halle. To date, only one volume, which appeared in 1904, has been published. It is well provided with bibliographic notes. Prof. Berner,[2] an eminent scholar and authority in German criminal law, wrote a treatise on the same subject. The eighteenth and last edition was published in 1898. It gives an excellent, although brief account of the history and sources of German criminal law before and after the Carolina.

A useful dictionary of criminal law in the form of an index-digest to the criminal decisions of the supreme court, was edited by Dr. M. Stenglein,[3] formerly judge of that court, whose commentary has been mentioned *supra*. Two volumes appeared in 1900 and a supplement by F. Galli brings the work down to 1904. A work dealing essentially with criminal law in its administrative aspects from an historical and comparative standpoint, by Dr. James Goldschmidt,[4] now professor in Berlin, gives evidence of much scholarly research.

There are some important German periodicals on the subject of criminal law. The oldest is the one known as *Goltdammer's Archiv*,[5] which was founded in 1853 and is now edited by Prof. Kohler of Berlin. Another prominent periodical is

[1] Finger, August. Lehrbuch des deutschen strafrechts. Berlin, C. Heymann's verlag, 1904. 1 v.

[2] Berner, Albert Friedrich. Lehrbuch des deutsches strafrechts. 18th ed. Leipzig, B. Tauchnitz, 1898. 752 p.

[3] Stenglein, Melchior. Lexikon des deutschen strafrechts; nach den entscheidungen des Reichsgerichts zum strafgesetzbuche zusammengestellt und hrsg. von Dr. M. Stenglein. . . . Berlin, O, Liebmann, 1900. 2v. and supplement.

[4] Goldschmidt, James Paul. Das verwaltungsstrafrecht. Berlin, C. Heymann, 1902. 603 p.

[5] Archiv für strafrecht u. strafprozess, founded by Goltdammer. Berlin, R. v. Decker, 1853 and cont.

the *Zeitschrift für die gesamte strafrechtswissenschaft*,[1] now edited by Profs. Liszt and Lilienthal, both eminent authorities. It was founded in 1881. This periodical, which is the organ of the International Union of Criminal Law (*Internationale Kriminalistische Vereinigung*) publishes a supplement under the title *Mitteilungen der internationalen kriminalistischen vereinigung* which also appears occasionally in French. The supplements deal with the criminal codes of foreign countries or present special studies on foreign criminal law. Translations of foreign codes into the German language are also published by the association.

The subject of German criminal law would be left incomplete if mention were not made of the great names of Feuerbach, Grolman, Kleinschrodt and Mittermaier, whose works, although for practical purposes now antiquated, exercised a potent influence on the development of criminal law in Germany.

CRIMINAL PROCEDURE

The establishment and jurisdiction of criminal courts is provided for in the Judiciary Act of January 27, 1877, to which reference has already been made. The Code of Criminal Procedure was one of the four great codes—Bankruptcy Act, Judiciary Act, Codes of Civil and of Criminal Procedure, enacted during the law reform movement of 1877. Hahn's *Die gesammten materialien zu den reichsjustizgesetzen* (Berlin, Decker, 1897–1909) report the drafts, "motives," and summarized debates connected with the enactment of all the more important imperial statutes. The Code of Criminal Procedure was enacted February 1, 1877, and went into effect on October 1, 1879. The draft of a new code of criminal procedure is now before the *Bundesrat*.

[1] Zeitschrift für die gesamte strafrechtswissenschaft. Berlin und Leipzig, J. Guttentag, 1881 and cont.

German criminal procedure is based largely on the French system, but it has been modified by the incorporation of many provisions of English origin. The best account in English of German criminal procedure is that prepared by Prof. Wolfgang Mittermaier, of Heidelberg and Berne, for the International Prison Commission. It is included in a report submitted by the United States commissioner to the Secretary of State, and is published in House Document 489, Fifty-sixth Congress, second session, pages 104–122. Besides a brief historical account, it discusses most learnedly the theories and principles of German criminal procedure, and presents a valuable analysis of the provisions of the code of 1877.

The older criminal procedure of Germany is discussed in an article in the American Jurist, volume 19 (1838), pages 332–349. It is a translation of an article by Foelix in the *Revue etrangère et française*, December 1836, which was founded on Mittermaier's great work *Das deutsche strafverfahren* (Heidelberg, 2d ed., 1832–33). The article presents Mittermaier's philosophy of criminal law. A learned account of the history and principal features of German criminal procedure from the earliest days to the present German code, is contained in an article by H. A. D. Phillips in the Law Quarterly Review, volume 10 (1894), pages 16–31. Incidental comparisons with the French and Austrian codes lend added interest to the article. Another good account of criminal courts in Germany was written by B. L. Moseley under the title "Criminal courts and procedure in Germany." It appeared in the Law Magazine and Review, fourth series, volume 10 (1884), pages 263–283, 369–412. He treats the subject by way of comparison with the French, Austrian and English systems and enters into a critical discussion of the principal features of the German Code. Another critical discussion of the provisions of this code was published by

Edward Zimmerman in the Law Magazine and Review, fourth series, volume 1 (1875), pages 103–112. A popular account of the procedure in a criminal trial was published in the Journal of Jurisprudence, volume 34 (1890), pages 569–579. The article describes the celebrated Vering trial and incidentally discusses the German duelling "code." An able article by Burt Estes Howard on "Trial by jury in Germany" was published in the Political Science Quarterly, volume 19 (1904), pages 650–672. A good French translation of the German Code of Criminal Procedure was edited with notes by Fernand Daguin,[1] the learned secretary of the French *Société de Législation Comparée* at the instance of the French Government.

A handy edition of the Code of Criminal Procedure is that edited by Dr. P. Daude,[2] former district attorney. All the amendments up to that of June 5, 1905, are taken into account as well as all the laws relating to criminal procedure. It is annotated with the decisions of the imperial supreme court. An excellent commentary upon the code, the one regarded as the standard work, was edited by Dr. E. Löwe,[3] formerly presiding justice of the imperial supreme court at Leipzig. Since his death Prof. Hellwig has edited the commentary, which in its twelfth edition appeared in 1907.

The most scientific treatise on the subject of criminal procedure is the *Handbuch* in three volumes by Prof. Julius Glaser,[4] the noted Viennese jurist. It appears as a part of the

[1] Daguin, Fernand. Code de procedure pénale allemand (1 février 1877) traduit et annoté par Fernand Daguin . . . Paris, Imprimerie nationale, 1884. 404 p.

[2] Daude, P. Die Strafprozessordnung für das Deutsche Reich vom 1. februar 1877 und das Gerichtsverfassungsgesetz vom 27. januar 1877, 17. mai 1898, 5. juni 1905. 7th ed. Berlin, H. W. Müller, 1908. 424 p. 8th ed. by Oppermann, announced 1912.

[3] Löwe, E. Die Strafprozessordnung für das Deutsche Reich. 12th ed. bearb. von Dr. A. Hellwig . . . Berlin, J. Guttentag, 1907. 1066 p.

[4] Glaser, Julius Anton. Handbuch des strafprozesses. Leipzig, Duncker & Humblot, 1883–1907. 3 v.

Binding series. Naturally, Austrian law receives much attention. An appreciation of Glaser's great work and influence is found in a little pamphlet by Prof. Unger, chief justice of Austria, entitled *Nachruf auf Glaser* (Wien, 1885). The third volume, which deals with procedure in jury and laymen's courts (*Schwur- und Schöffengerichte*) was written by Prof. Friedrich Oetker, of Würzburg.

A most useful work outlining the law of criminal procedure, is written by Prof. Karl Binding,[1] his well-known *Grundriss* of criminal procedure (5th ed., 1904). It follows somewhat the methods of his *Grundriss* on criminal law. A work which deserves attention by reason of the prominence of its author in the movement for the reform of criminal law and procedure is the *Deutsches strafprozessrecht* (1898) by Dr. Karl Birkmeyer,[2] of Munich, the editor of the well-known *Encyklopädie*.

Procedure in jury courts (*Schwurgerichte*) has been the subject of a number of articles in English. The best of those dealing with the recent practice is by Prof. Burt Estes Howard, which appeared in the Political Science Quarterly, volume 19 (1904), pages 650–672. The operation of the jury system in Germany is discussed, from the selection of the jurymen until final verdict. Some older articles written prior to the Judiciary Act of 1877 and the code of that year, were published by Dr. Edward Zimmerman, in the American Law Record, volume 3 (1874), pages 1–18, 129–139, and an appendix to the articles in the same volume, pages 356–363. The articles were reprinted in the Law Magazine and Review of 1874. A practical study on procedure in jury courts was published by Judge J. Feddersen[3] in 1907. The decisions of the

[1] Binding, Karl. Grundriss des deutschen strafprozessrechts. 5th ed. Leipzig, Duncker & Humblot, 1904. 301 p.

[2] Birkmeyer, K. Deutsches strafprozessrecht. Berlin, H. W. Müller, 1898. 879 p.

[3] Feddersen, J. Das Schwurgericht. Berlin, Otto Liebmann, 1907. 244 p.

Supreme Court are specially noted. In the matter of jury courts attention is directed to the volume by Oetker in Glaser's *Handbuch* and especially to *Brunner's* [1] celebrated historical treatise on the origin of the jury system. This work is an example of the highest type of German scholarship. Under the head of "Death sentences in Germany," Dr. H. Becker shows, in an article in the Green Bag, volume 21 (September, 1909), pages 433–436, that death sentences in Germany with rare exceptions are only carried out where there is a confession of guilt.

Recent contributions to the literature of criminal procedure are discussed by Prof. Beling of Tübingen in a series of short reviews in the *Zeitschrift für die gesamte strafrechtswissenschaft*, volume 31 (1911), Heft 7, pages 737–748.

Germany has enacted two progressive and useful statutes, the object of which is to have the State compensate those individuals who have been unjustly convicted or unjustly arrested and arraigned, for the material injuries suffered. Austria, France, Sweden, Norway, Denmark, and Hungary had preceded Germany in enacting laws on the subject. The law of May 20, 1898, which provides for compensation for those unjustly convicted who on second trial or under the disclosure of new evidence have been declared "not guilty" by the judgment of a competent court, was followed by the law of July 14, 1904, which provided that those unjustly arrested and arraigned should be compensated for the material injuries suffered. A good commentary on the two laws was written by Dr. Eduard Burlage,[2] the chairman of the *Reichstag* committee which reported the law of

[1] Brunner, H. Die entstehung der schwurgerichte. Berlin, Wiedmann, 1872. 478 p.

[2] Burlage, Eduard. Die entschädigung der unschuldig verhafteten und der unschuldig bestraften. Kommentar zu den reichsgesetzen vom 14. juli 1904 und 20. mai 1898. Berlin, O. Liebmann, 1905. 157 p.

1904. Besides the commentary, the author gives an interesting account of the principles underlying the law and of its general content. An historical survey of the antecedents of the law, together with a useful commentary, was written by Judge Johannes Krause.[1] A monograph discussion on the substantive and procedural elements of the laws in question was published, for the practitioner, by Dr. Otto Kähler.[2]

MILITARY CRIMINAL LAW

The Penal Code for the army and navy (*Militärstrafgesetzbuch*) of June 20, 1872, was translated into English by Maj. W. Winthrop,[3] judge advocate of the United States Army. A good commentary on the Military Penal Code was published by C. von Koppmann[4] (3d ed., 1903). A small annotated edition of the same code was edited by Dr. Herz,[5] president of the imperial military court, assisted by Dr. Georg Ernst, privy councillor. An extensive work on the criminal law for the army and navy was published by Elsner von Gronow[6] and Sohl in 1906. A systematic work dealing with the Military Penal Code, especially as it affects officers of the German navy, is that by Dr. Rudolf Eichheim,[7] published

[1] Krause, Johannes. Haftentschädigung. Kommentar. Hannover, Helwingsche verlagsbuchhandlung, 1906. 224 p.

[2] Kähler, Otto. Die entschädigung für strafe und untersuchungshaft. Halle a. D., Buchhandlung des Waisenhauses, 1904. 93 p.

[3] Military penal code (Militär-Strafgesetzbuch) for the German Empire. Translated by Maj. W. Winthrop. Washington, 1873. 54 p.

[4] Koppmann, C. von. Kommentar zum Militärstrafgesetzbuch. 3d ed. By G. Weigel. München, C. H. Beck, 1903. 612 p.

[5] Herz, Paul & Ernst, Georg. Militär-strafgesetzbuch für das Deutsche Reich. 2d ed. Berlin, F. Vahlen, 1908. 409 p.

[6] Elsner v. Gronow, K. & Sohl, G. Militärstrafrecht für heer u. marine. Berlin, H. W. Müller, 1906. 1120 p.

[7] Eichheim, Rudolf. Handbuch des materiellen strafrechts. Unter besonderer berücksichtigung der verhältnisse bei der kaiserlichen marine mit unterstützung des Reichsmarineamts, hrsg. von Dr. Rudolf Eichheim. Berlin, C. Heymann's verlag, 1904. 468 p.

under the auspices of the German navy department. It is annotated with the decisions of the imperial military court and prints the more important maritime laws in an appendix. The recent literature on military criminal law is discussed in short reviews by Dr. E. Steidle of Munich in the *Zeitschrift für die gesamte strafrechtswissenschaft,* volume 31 (1911), Heft 7, pages 766–771.

The Military Code of Criminal Procedure of December 1, 1898, is the subject of an extended commentary by Dr. C. von Koppmann.[1] Herz and Ernst,[2] the writers just mentioned, also published an annotated edition of this code (4th ed., 1907). The decisions of the imperial military court are now being regularly reported in a series known as the *Entscheidungen des reichsmilitärgerichts.*[3] Fifteen volumes have already appeared.

REFORM OF CRIMINAL LAW AND PROCEDURE

The reform movement in criminal law and procedure has been the focus of interest in legal circles in Germany for some years. As the result of it a new criminal code has been drafted and extensive reforms in criminal procedure are about to be undertaken. For an understanding of the difference between the three schools of criminal law reform now active in Germany, attention is called to an article by Prof. Liepmann, of Kiel, in the *Zeitschrift für die gesamte strafrechtswissenschaft,* volume 28 (1908), pages 1–21, entitled *Strafrechtsreform und schulenstreit.* The first of the schools is the

[1] Koppmann, C. v. Kommentar zur Militärstrafgerichtsordnung von Dec. 1, 1898. München, C. H. Beck, 1900. 480 p.

[2] Herz, Paul and Ernst, Georg. Militärstrafgerichtsordnung. 4th ed. Berlin, F. Vahlen, 1907. 562 p.

[3] Entscheidungen des reichsmilitärgerichts. Hrsg. von den Senatspräsidenten und dem Obermilitäranwalt unter mitwirkung der juristischen mitglieder der senate. Berlin, F. Vahlen, 1902–1911. 15 v and cont.

classical school, represented by Prof. Birkmeyer, which seeks to hold fast to the older retributive theories of punishing a crime as an objective offense, with a definite sentence. The second is the sociological subjective or protection school, represented by Prof. Liszt, which advances the theory of the punishment of the criminal rather than of the specific crime, taking into account his physical and social antecedents and environment and congenital predisposition. This school emphasizes the subjective psycho-physical elements in crime and in the criminal. The third school is that of Merkel, which holds a middle ground between the first two. A brief account of the difference between the classical (Birkmeyer) school and the sociological (von Liszt) school, was published by Ernst Bruncken in the Albany Law Journal, volume 68 (1906), page 111.

Liszt stands in the front rank of modern criminologists. An appreciation of his work and influence was written on the occasion of his sixtieth birthday by Dr. N. H. Kriegsmann, of Kiel, and published in the *Juristisches literaturblatt*, July 1, 1911, volume 23, pages 121–124. The article also describes at some length the contents of the two jubilee volumes (*Festschriften*) dedicated to Prof. Liszt in honor of his birthday. A biography of Liszt also appeared as an editorial comment in the Journal of criminal law and criminology, volume 2, No. 2 (July, 1911), pages 168–170.

"The reform of criminal law in Germany" is the title of an article by Dr. Adolf Hartmann of Berlin which appeared in the Journal of criminal law and criminology, volume 2, No. 3 (September, 1911), pages 349–355. The author deals with some of the reforms contained in the new draft codes and discusses the difficulties to be overcome before their enactment into law. He discusses the prevailing theory of German criminal law, which is based on discipline and relentless retribution and inquisitory methods of trial.

Undoubtedly the most important work in connection with the reform of criminal law, is a sixteen volume collection of scientific contributions on the subject in which practically every leading authority in Germany is represented. These sixteen volumes, one of which is an index, were edited under the auspices of the Department of Justice, and to a large extent constituted the basis for the work of the legislative commission having charge of the drafting of the new code. It is a striking example of the scientific way in which Germans proceed to enact new legislation of importance. The work bears the title *Vergleichende darstellung des deutschen und ausländischen strafrechts*,[1] and as its title indicates, foreign criminal law is drawn upon for purposes of comparison.

The preliminary draft of the new Penal Code [2] was published on the order of the Department of Justice in 1909. The draft includes the "motives" and represents the final work of the preliminary commission which sat from April 4 to May 18 in seventeen sessions. They took account of the counter draft (*Gegenentwurf*)[3] which was submitted by four of the leading authorities in Germany—Kahl, Lilienthal, Liszt and Goldschmidt, two of whom are classicists and two, progressives. A brief report of the sessions of the code commission is to be found in the *Deutsche juristen-zeitung*, June 1, 1911, columns 721–725. The most noteworthy suggestions and criticisms contained in the counterproject mentioned are concisely stated by Dr.

[1] Germany. Vergleichende darstellung des deutschen und ausländischen strafrechts. Vorarbeiten zur deutschen strafrechtsreform. Hrsg. auf anregung des Reichsjustizamtes von den professoren dr. Karl Birkmeyer, dr. Fritz van Calker, dr. Reinhard Frank, dr. Robert v. Hippel, dr. Wilhelm Kahl, dr. Karl v. Lilienthal, dr. Franz v. Liszt, dr. Adolf Wach. Berlin, O. Liebmann, 1905–1909. 16 v.

[2] Vorentwurf zu einem deutschen strafgesetzbuch, nebst begründung. Berlin, Guttentag, 1909. 66, 869 p.

[3] Gegenentwurf zum vorentwurf eines deutschen strafgesetzbuches. v. Kahl, Lilienthal, Liszt and Goldschmidt. Berlin, Guttentag, 1911. 2 v.

Aschrott in volume 24, No. 1 (Jan. 15, 1912) of the *Juristisches literaturblatt*, pages 1–2. A collection of critical discussions of the new draft code was published by Profs. Aschrott [1] and Liszt in two volumes (Berlin, 1910). The leading criminologists and jurists of Germany are contributors to the work. The new drafts of penal codes in Austria and Switzerland are drawn upon for purposes of comparison. The recent works on criminal law, especially those relating to criticisms of the project (*Vorentwurf*) of the new Criminal Code are discussed by Dr. Kriegsmann of Kiel in volume 31 (1911), Heft 7, pages 691–737, of the *Zeitschrift für die gesamte strafrechtswissenschaft*. Profs. Birkmeyer and Nagler are the editors of a series of monographs [2] on the reform of criminal law, some of the contributions to which, especially those of Birkmeyer and Nagler, are important. Prof. Birkmeyer's theories are further ably presented in three recent volumes [3] in which he criticizes the new draft code. He objects to its attitude of compromise, in that while it follows his classical theories generally, it has made some concessions to the new progressive theories of Liszt. The volumes present valuable discussions of the principles underlying the new preliminary draft. Birkmeyer's criticisms of Liszt's sociological theories are perhaps best brought out in a small work published in 1906 entitled *Was lässt von Liszt vom strafrecht übrig*? [4]

The reform movement, especially its sociological tendencies, has produced a large and valuable literature. Prof. Aschaffenburg, of Köln, in the *Zeitschrift für die gesamte*

[1] Aschrott u. Liszt. Die reform des reichsstrafgesetzbuches. Berlin, Guttentag, 1910. 2 v.

[2] Birkmeyer u. Nagler. Kritische beiträge zur strafrechtsreform. Hrsg. v. Birkmeyer u. Nagler. Leipzig, W. Engelmann, 1908–1911. 14 vols. to 1911.

[3] Birkmeyer, K. Beiträge zur kritik des vorentwurfs zu einem deutschen strafgesetzbuches. Leipzig, Engelmann, 1910. 3 v.

[4] Birkmeyer, K. Was lässt von Liszt vom strafrecht übrig? München, C. H. Beck, 1906. 102 p.

strafrechtswissenschaft (vol. 31, heft 7, pp. 749–758), makes a critical study of the recent literature dealing with the psychology of the criminal and medical jurisprudence. The recent literature on penology in relation to prisons and prison systems is discussed by Dr. W. Leonhard in the same number, pages 758–766.

Prof. von Bar[1] of Göttingen is the author of an excellent work in three volumes, written from the point of view of the classical school of criminologists. The theories of all the schools are discussed under appropriate subject divisions of the criminal law. A valuable work of Hans Gross[2] on criminal psychology has recently been translated into English in the *Modern criminal science series*. While Prof. Gross is an Austrian, his work deserves mention at this point, because of his great influence throughout Germany. The *Modern criminal science series* is being translated and published under the auspices of the American Institute of Criminal Law and Criminology. Three of the nine volumes which it purposes to publish have already appeared. Their importance as contributions to the scientific study of a subject in which America lags far behind Europe cannot be over-estimated. The committee on translations consists of the following gentlemen: Profs. John H. Wigmore, Ernst Freund, Maurice Parmelee, Roscoe Pound, Robert B. Scott and W. W. Smithers, Esq. Another German work which is to be translated as a part of this series is the well-known book of Prof. Aschaffenburg,[3] of Köln, *Das verbrechen und seine bekämpfung*. Under the title *Crime and its repression* this volume is now being translated

[1] Bar, Ludwig von. Gesetz und schuld im strafrecht. Fragen des geltenden deutschen strafrechts und seiner reform. Berlin, J. Guttentag, 1906–1909. 3 v.

[2] Gross, Hans. Criminal psychology. Translated by Horace M. Kallen. Boston, Little, Brown, 1911. 513 p.

[3] Aschaffenburg, G. Das verbrechen u. seine bekämpfung. 2d ed. Heidelberg, C. Winter, 1906. 277 p.

by A. Albrecht.[1] Prof. Hans Gross[2] is also the author of a work *Handbuch für untersuchungsrichter*, which has been translated into eight foreign languages. It is a practical handbook for magistrates, police officers, and lawyers. Under the title *Criminal investigation* it has been translated into English by J. Adam, 1907.

A number of other critical studies, psychological, philosophical and criminological, all bearing on the theory of crime and the criminal, merit special attention. These are first: the psychological study of motive in criminal law and the theory of punishment by Prof. Friedrich[3] of Giessen; a philosophical study by Dr. Fritz Berolzheimer,[4] in the fifth volume of his *System der rechts- und wirtschaftsphilosophie;* the critical studies of the theory of guilt and punishment by Profs. Mittermaier[5] and Beling;[6] and the psychological studies of Wulffen[7] and Sommer.[8]

The reform of criminal procedure has likewise been the occasion for the publication of a great number of tracts and of some valuable larger works. A commission was appointed

[1] Aschaffenburg, G. Crime and its repression. Translated by A. Albrecht. Boston, Little, Brown, 1912.

[2] Gross, Hans. Criminal investigation. Translated by J. Adam and J. C. Adam. New York, Lawyers Cooperative Pub. Co., 1907. Boston, Little, Brown, 1906. 889 p.

[3] Friedrich, Julius. Die bestrafung der motive und die motive der bestrafung: rechtsphilosophische und kriminalpsychologische studien. Berlin und Leipzig, W. Rothschild, 1910. 312 p.

[4] Berolzheimer, Fritz. Strafrechtsphilosophie und strafrechtsreform—in vol. 5 of his System der rechts u. wirtschaftsphilosophie. München, 1907.

[5] Mittermaier, Wolfgang. Kritische beiträge zur lehre von der strafrechtsschuld. Giessen, Töpelmonn, 1909. 56 p.

[6] Beling, Ernst. Unschuld, schuld u. schuldstufen im vorentwurf zu einem deutschen strafgesetzbuche. Leipzig, Engelmann, 1910. 91 p.

[7] Wulffen. Psychologie des verbrechers. Gross- Lichterfelde-Ost, P. Langenscheidt, 1908. 2 v.

[8] Sommer, Robert. Kriminalpsychologie. Leipzig, J. A. Barth, 1904. 388 p.

in 1902 by the Department of Justice to make recommendations for the reform of criminal procedure. Its protocols were published officially[1] in two volumes (Berlin, 1905). Two monographs by one of the leaders in the movement for the reform of procedure, Dr. Adickes,[2] the noted reform mayor of Frankfurt, deserve special mention. In these two books he presents the basic principles of procedural reform. Prof. Liszt has made a small contribution to the special subject of reform of criminal procedure.[3] Critical discussions of the drafts submitted by the commission of the Department of Justice appear in a volume edited by Dr. P. F. Aschrott[4] (Berlin, 1906). These discussions were contributed at the invitation of the *Internationale Kriminalistische Vereinigung.* Critical articles on the reform of criminal procedure were edited in an edition of three volumes by the leaders in the movement, Adickes,[5] Aschrott, Lilienthal, and Liszt. They were published in Berlin in 1908. The reform of procedure in jury courts (*Schwurgerichte*) is one of the principal objects of the reform movement. The draft of an act of September 1, 1908, on criminal procedure, and of an act of March 26, 1909, amending the Judiciary Act, dealt especially with jury courts. The whole movement in its latest stage is discussed in a work by Prof. Liepmann[6] (Heidelberg, 1910).

[1] Protokolle der kommission für die reform des strafprozesses. Berlin, Guttentag, 1905. 2 v.

[2] Adickes. Zur verständigung über die justizreform. Berlin, Guttentag, 1907. 124 p. Adickes. Grundlinien durchgreifender justizreform. Berlin, J. Guttentag, 1906. 170 p.

[3] Liszt, Franz von. Die reform des strafverfahrens. Berlin, Guttentag, 1906. 56 p.

[4] Aschrott, P. F. Reform des strafprozesses. Kritische besprechungen der von der Kommission des Reichsjustizamts gemachten vorschläge. Berlin, J. Guttentag, 1906. 124+784 p.

[5] Beiträge zur reform des strafprozesses. Herausg. v. Adickes, Aschrott, Lilienthal u. Liszt. Berlin, J. Guttentag, 1908. 3 v.

[6] Liepmann, M. Die reform des deutschen schwurgerichts. Heidelberg, Winter, 1910. 263 p.

A collection of critical monographs on the subject was edited by Profs. Mittermaier and Liepmann[1] (Heidelberg, 1906–1909). Articles based on the reform of procedure in the lower courts of lay judges were collected in a small volume published under the title *Strafprozess-reform und laienrichter*[2] (Berlin, 1910).

PUBLIC LAW

Public law includes constitutional, administrative, international, ecclesiastical, colonial, and criminal law. Both civil and criminal procedure are usually added. Criminal law and civil and criminal procedure have already been discussed. International law, as stated in the beginning, is excluded from this survey. In the course of this section we shall mention first the prominent works on public law in general. These deal primarily with constitutional and administrative law, and must not be overlooked in considering the important literature on one or the other of these branches of public law. We shall then take up, *seriatim*, constitutional, ecclesiastical, colonial and administrative law.

The principal work on German public law is unquestionably that of Prof. Laband,[3] the learned jurist of Strassburg (4th ed., 1901). Two volumes of a new (fifth) edition appeared in 1911. This work in its second edition was the subject of a careful review and analysis by Prof. John W. Burgess of Columbia University, in the Political Science Quarterly, volume 3 (1888), pages 123–135, in an article entitled "Laband's public law of the German Empire." The third

[1] Schwurgerichte u. schöffengerichte. Beiträge zu ihrer kenntniss u. beurteilung. Hrsg. v. Mittermaier u. Liepmann. Heidelberg, C. Winter, 1906–1909. 2 v.

[2] Strafprozessreform und laienrichter. Berlin-Charlottenburg, Vita, Deutsches Verlagshaus, 1910. 134 p.

[3] Laband, Paul. Das staatsrecht des Deutschen Reiches. 4th ed. Tübingen und Leipzig, J. C. B. Mohr, 1901. 4 v. 5th ed. 1911–12.

edition of the work was translated into French.[1] A valuable reference work on all questions of public law and economics is the well-known "*Handwörterbuch*" in eight volumes, edited by Conrad, Elster,[2] and others. Its third edition has recently been completed. An important treatise on German public law is that by the late Prof. Georg Meyer [3] of Heidelberg, edited in its sixth edition, 1905, by Prof. Georg Anschütz. A convenient two volume treatise was written by Prof. Phillip Zorn,[4] of Königsberg. Another popular work on German constitutional and administrative law, analytical in its treatment, is from the pen of Prof. Arndt,[5] of Königsberg (Berlin, 1901).

A valuable work, the usefulness of which is attested by its many editions, is the *Handbuch*, in this case what we might call a handbook, of Baron Hue de Grais,[6] privy councillor. In a compact volume, it presents a synopsis, with annotations, of all the administrative laws of importance, such as those relating to the army and navy, finance, police, administration of justice, procedure, education, the church, industry, mining, commerce and transportation. The twenty-first edition, 1911, is the last; new editions appear almost every year. A work dealing with the constitutional and administrative features of the economic and social legislation of the end of the nineteenth

[1] Laband, Paul. Le droit public de l'Empire allemand. Edition française. Paris, 1900–1904. 6 v.

[2] Handwörterbuch der staatswissenschaften, hrsg. v. Conrad, Elster, Lexis, Loening. 3d ed. Jena, G. Fischer, 1908–11. 8 v.

[3] Meyer, G. Lehrbuch des deutschen staatsrechtes. 6th ed., by G. Anschütz. Leipzig, Duncker & Humblot, 1905. 893 p.

[4] Zorn, Phillip Karl Ludwig. Das staatsrecht des Deutschen Reiches. 2d ed. Berlin, J. Guttentag, 1895–97. 2 v.

[5] Arndt, Adolf. Das staatsrecht des Deutschen Reiches. Berlin, O. Häring, 1901. 972 p.

[6] Hue de Grais, Robert. Handbuch der verfassung und verwaltung in Preussen und dem Deutschen Reiche. 21st ed. Berlin, J. Springer, 1911. 676 p.

century is that by Judge Paul Altmann,[1] in two volumes, of which the second deals with Prussia alone. Nor should we, in speaking of leaders in public law, omit the name of the late Prof. Jellinek, all of whose works are in high repute. His *System der subjectiven öffentlichen rechte*[2] is justly entitled to a prominent place in the literature of German public law. An account of Prof. Jellinek's life and literary activities appears in the *Juristisches literaturblatt*, volume 23 (Feb. 15, 1911), pages 25–27. Robert von Mohl and Rudolph Gneist, though both long deceased, are still considered leading authorities. Mohl's works on public law are still used as quarries of information by publicists of the present day. Two of his larger works, especially the one dealing with the history and literature of public law, deserve attention at this point.[3] Gneist's *Rechtsstaat*[4] still engages the attention of every student of political science. On his work and influence, see the article on "Four German jurists" by Prof. Munroe Smith (*supra*, p. 35).

In a collection appearing under the name *Das öffentliche recht der gegenwart* (Tübingen, Mohr), under the general editorship of Profs. Jellinek, Laband, and Piloty, leading publicists treat of the public law of the important States of the world, one country per volume. The series is intended to take the place of the now somewhat antiquated collection edited by Marquardsen, *Handbuch des öffentlichen rechts*. The current movement in public law is presented in an annual

[1] Altmann, Paul. Die verfassung und verwaltung im Deutschen Reiche und Preussen; handbuch des öffentlichen rechts der gegenwart. Berlin, C. Heymann, 1907–8. 2 v.

[2] Jellinek, G. System der subjektiven öffentlichen rechte. 2d ed. Tübingen, Mohr, 1905. 366 p.

[3] Mohl, Robt. von. Geschichte u. literatur der staatswissenschaften. Erlangen, Enke, 1855. 3 v. Mohl, Robt. von. Staatsrecht, völkerrecht u. politik. Tübingen, Laupp, 1860. 3 v.

[4] Gneist, R. Der rechtsstaat u. verwaltungsgerichte in Deutschland. 2d edition. Berlin, Springer, 1879. 360 p.

volume, the first of which appeared in 1907 (likewise edited by Profs. Jellinek, Laband, and Piloty), under the title *Jahrbuch des öffentlichen rechts* (Tübingen, Mohr). In a collection begun in 1908 entitled *Bibliothek des öffentlichen rechts* (Hannover, Jänecke), under the general editorship of Scholz and Storck, small treatises are published dealing in popular form with the public law of the principal world states as well as the individual States of the German Empire. An excellent collection of 20 monographs, in two volumes, dealing with a variety of questions in the field of political science and public law, was dedicated as a *Festgabe* (jubilee volume) to Prof. Laband on the fiftieth anniversary of his doctorate. They appear under the title *Staatsrechtliche abhandlungen.*[1] A number of serials, somewhat on the order of the Columbia and Johns Hopkins studies in public law, are published at various German universities, but on the whole are not of sufficient importance to warrant specific mention in this survey.

CONSTITUTIONAL LAW

A useful bibliography of German constitutional law appears at pages 129–131 of Prof. George Elliott Howard's syllabus on *Comparative federal institutions* (Lincoln, Nebr., 1907). A good work on the constitutional law of the German Empire is that by Prof. Burt Estes Howard[2] entitled *The German Empire.* German constitutional law is also treated in Prof. Burgess'[3] well-known *Political science and comparative constitutional law.* An instructive article on the constitutional agencies of governmental administration in the German Empire and its various states as compared with the system pre-

[1] Staatsrechtliche abhandlungen, festgabe für Paul Laband zum fünfzigsten jahrestage der doktor-promotion. Tübingen, J. C. B. Mohr (P. Siebeck), 1908. 2 v.

[2] Howard, Burt Estes. The German Empire. New York, Macmillan, 1906.

[3] Burgess, Political science and comparative constitutional law. Boston, 1890–91. 2 v. 2d ed. v. 1, Boston, 1902.

vailing in this country, was recently published by Prof. Otto Gierke under the title "German constitutional law in its relation to the American constitution" (Harvard Law Review, vol. 23, Feb. 1910, pp. 273–90). A leading work on German constitutional law is Prof. Laband's [1] *Deutsches reichsstaatsrecht*, the fifth edition of which appeared in 1909. A work of importance is that of Prof. Haenel,[2] *Deutsches staatsrecht*, only the first volume of which, on constitutional law, has been published. It appears in the Binding series. Prof. Arndt,[3] of Königsberg, is the author of a useful little work, the fourth edition of which has recently appeared. Bornhak's [4] *Grundriss* is another popular book. The sources of German constitutional law are treated in the first volume of the *Quellensammlung zum staats- verwaltungs- und völkerrecht* by Profs. Triepel [5] and Zeumer. Some of the writers on constitutional law, whose principal work was accomplished in the middle of the nineteenth century, also deserve attention. Prominent among them are Gneist, Mohl,[6] Zachariae,[7] and Zoepfl.[8]

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[1] Laband, Paul. Deutsches reichsstaatsrecht. 5th ed. Tübingen, J. C. B. Mohr (P. Siebeck), 1909. 448 p.

[2] Haenel, Albert. Deutsches staatsrecht. Leipzig, Duncker & Humblot, 1892. 1 v.

[3] Arndt, Adolf. Verfassung des Deutschen Reiches. 4th ed. Berlin, J. Guttentag, 1911. 438 p.

[4] Bornhak, Konrad. Grundriss des deutschen staatsrechts. 2d ed. Leipzig, Deichert, 1910. 263 p.

[5] Triepel, Heinrich. Quellensammlung zum deutschen reichsstaatsrecht. Zusammengestellt von Dr. Heinrich Triepel . . . Leipzig, C. L. Hirschfeld, 1901. 343 p.

[6] Mohl, Robert von. Das deutsche reichsstaatsrecht. Rechtliche und politische erörterungen von Robert von Mohl. Tübingen, H. Laupp, 1873. 408 p.

[7] Zachariae, Heinrich Albert. Deutsches staats- und bundesrecht. 3d ed. Göttingen, Vandenhoeck und Ruprecht, 1865–1867. 2 v.

[8] Zoepfl, Heinrich Matthias. Grundsätze des gemeinen deutschen staatsrechts, mit besonderer rücksicht auf das allgemeine staatsrecht und auf die neuesten zeitverhältnisse. 5th ed. Leipzig und Heidelberg, C. F. Winter'sche verlagshandlung, 1863. 2 v.

The general theory of the state (*Allgemeine Staatslehre*) has been the subject of a number of scholarly treatises. One of the most prominent is Jellinek's work,[1] part I of his *Recht des modernen staates*. This book has recently been translated into French (Paris, Giard & Brière, 1911). The classic of Prof. Bluntschli[2] naturally occupies a prominent place (6th ed., 1886). This work has been translated into English.[3]

The law concerning the acquirement and loss of citizenship, was enacted on June 1, 1870. Besides its treatment in the more general works, it finds special treatment in the book of Dr. Wilhelm Cahn,[4] in which the law is fully annotated. The third edition appeared in 1908. In the same year Dr. Cahn[5] wrote an interesting monograph on the reform of the nationality laws of Germany. A small work dealing particularly with the national military duties involved in German citizenship, as they affect emigrants to the United States, was published by F. W. S. Tingle[6] (Philadelphia, 1903).

ECCLESIASTICAL LAW

Canon law was accepted in Germany at the same time as Roman law. While many of its elements are to this day clearly traceable sources of modern German law, its application, on the whole, is of relatively slight importance in any legal relations except those of the church and its functions.

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[1] Jellinek, Georg. Allgemeine staatslehre. 2d ed. Berlin, O. Häring, 1905. 797 p.

[2] Bluntschli, J. C. Allgemeine staatslehre. 6th ed., by E. Loening. Stuttgart, Cotta, 1886. 2 v.

[3] Bluntschli, J. C. The theory of the state. 3d ed. Oxford, Clarendon Press, 1898. 550 p.

[4] Cahn, Wilhelm. Das reichsgesetz über die erwerbung und den verlust der reichs und staats-angehörigkeit, vom 1. juni 1870, erläutert. 3d ed. Berlin, J. Guttentag, 1908. 582 p.

[5] Cahn, Wilhelm. Zur reform des reichs- und staats-angehörigkeitsgesetzes. Berlin, J. Guttentag, 1908. 39 p.

[6] Tingle, E. M. S. Germany's claims on German-Americans in Germany. Philadelphia, 1903.

The history of German canon law is treated in two volumes by Prof. Edgar Loening,[1] of Dorpat. They appeared in 1878. Prof. Rudolph Sohm,[2] of Leipzig, published the first volume of a treatise on canon law in 1895, as a part of the Binding series. This work of Sohm's has received careful treatment in English in a book by Walter Lowrie.[3] Prof. Emil Friedberg,[4] an authority on the subject, published the sixth edition of his well-known treatise in 1909. The late Prof. Paul Hinschius,[5] of Berlin, published his extensive work between 1869 and 1897. His death cut short the completion of the work, which ended with the first part of volume 6. An excellent history of the sources and literature of canon law covering the period from Gratian to the present day, was published by Prof. Johann von Schulte,[6] of Bonn. The work consists of three volumes in four, published in Stuttgart, 1875–1880. Two useful treatises on canon law are those by Hergenröther,[7] and by Heiner.[8]

COLONIAL LAW

A collection of the imperial laws relating to the German protectorates and colonies is published under the title *Die*

[1] Loening, Edgar. Geschichte des deutschen kirchenrechts. Strassburg and Tübingen, 1878. 2 v.

[2] Sohm, Rudolf. Kirchenrecht. Leipzig, Duncker & Humblot, 1892. v. 1.

[3] Lowrie, Walter. The church and its organization in primitive and Catholic times; an interpretation of Rudolph Sohm's *Kirchenrecht* v. 1. New York, London, Longmans, 1904.

[4] Friedberg, Emil. Lehrbuch des katholischen u. protestantischen kirchenrechts. 6th ed. Leipzig, Tauchnitz, 1909. 656 p.

[5] Hinschius, Paul. Das kirchenrecht der katholischen u. protestanten in Deutschland. Berlin, Guttentag, 1869–1897 (incomplete). v. I–VI.

[6] Schulte, John Fr. von. Die geschichte der quellen u. literatur des canonischen rechts. Stuttgart, 1875–80. 3 v. in 4.

[7] Hergenröther, P. Lehrbuch des katholischen kirchenrechts. 2d ed., by Hollweck. Freiburg, Herder, 1905. 949 p.

[8] Heiner, Frz. Katholisches kirchenrecht. v. I, 5th ed. Paderborn, Schöningh, 1909. 419 p.

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deutsche kolonialgesetzgebung,[1] edited by Köbner and Gerstmeyer. Ministerial decrees, ordinances and international agreements relating to the subject matter are reported in full. The thirteenth volume was published in 1911. An able little work on the legal position of the German protectorates, especially as affected by the new Civil Code, is that by Dr. Karl von Stengel,[2] the noted authority on administrative law. An introduction to German colonial law, by Hoffmann,[3] has recently been published. Prof. Gareis,[4] under the title *Deutsches kolonialrecht* has published an interesting work dealing with the law and legal position of the German colonies and protectorates. A periodical which devotes some attention to colonial law is *Beiträge zur kolonialpolitik*, founded in 1899, and issued since 1905 under the title *Zeitschrift für kolonialpolitik, kolonialrecht u. kolonialwirtschaft.* It is edited by the secretary of the *Deutsche Kolonialgesellschaft*, and published at Berlin by Süsserott.

ADMINISTRATIVE LAW

Much valuable information on German administrative law is contained in the excellent work of Prof. Goodnow, *Comparative administrative law* (New York, London, Putnam's, 1893, 2 vol.). The leading work on the subject in Germany is generally admitted to be Prof. Otto Mayer's[5] *Deutsches verwaltungsrecht.* General administrative law has remained a most diversified system, despite the unification of the Empire and the

[1] Die deutsche kolonial-gesetzgebung. Edited by Köbner & Gerstmeyer. Berlin, Mittler, 1893 ff., 13 v. and continuation.

[2] Stengel, Karl F. von. Die rechtsverhältnisse der deutschen schutzgebiete. Tübingen, Mohr, 1901. 239 p.

[3] Hoffmann, H. Edler v. Einführung in das deutsche kolonialrecht. Leipzig, Göschen, 1911. 231 p.

[4] Gareis, Karl. Deutsches kolonialrecht. 2d ed. Giessen, E Roth, 1902. 238 p.

[5] Mayer, Otto. Deutsches verwaltungsrecht. Leipzig, Duncker & Humblot, 1895–96. 2 v.

codification of its civil law. Prof. Mayer's work is distinguished from all the others on the subject by the fact that it is written from a legal point of view, rather than from that of administrative science and economics. It is a book for the lawyer, much like Laband's larger work on public law. It appeared in the Binding series. The general part deals with the historical development of administrative law and the general organization of public agencies of administration, their bases, procedure, and special legal institutions, such as the responsibility of the state for acts of its officers. In a special part, the author deals with police and finance, after which follows the civil law division of things (*Sachenrecht*), certain kinds of obligations, and juristic persons in public law. Prof. Mayer is one of the few publicists who write equally well in two languages. He published his work in a four volume French edition[1] in 1903–1906. Another notable work is that by the late Prof. Georg Meyer,[2] of Heidelberg, written from the standpoint of public administration. It is intended as a supplementary work to his treatise on public law (*supra*, p. 172). The work contains the following broad divisions: First, general doctrines and internal affairs, including public welfare measures; second, external administrative affairs or foreign relations; third, military matters; and fourth, finance. The third edition, edited by Dr. Franz Dochow, appeared in 1910. A recent work by Fleiner,[3] to judge from the book reviews, promises to be one of the most important in the field. The writer has, as yet, been unable to obtain this book.

[1] Mayer, Otto. Le droit administratif allemand. Ed. française par l'auteur, avec une preface de H. Berthelemy . . . Paris, V. Giard & E. Brière, 1903–06. 4 v.

[2] Meyer, Georg. Lehrbuch des deutschen verwaltungsrechts. 3rd ed. by Franz Dochow. Leipzig, Duncker & Humblot, 1910. 762 p.

[3] Fleiner, Fritz. Institutionen des deutschen verwaltungsrechts. Tübingen, Mohr, 1911. 358 p.

A jurist closely identified with administrative law is Prof. Karl von Stengel.[1] His treatise on the subject is now somewhat antiquated in view of the great progress in social legislation and improvement of administrative detail which Germany has witnessed within the last 20 years. His *Quellensammlung*[2] of administrative law (1902), volume 3 of the collection edited by Profs. Triepel and Zeumer (*supra*, p. 175) is a valuable source of information for the more important statutes and regulations of an administrative character. Perhaps his best known work is his *Wörterbuch*[3] which, in two volumes and three supplements, appeared in 1890–1898. The celebrated *Dictionnaire de l'administration française* of Maurice Block was its prototype. In the form of an alphabetical dictionary, it is a valuable reference work on all questions of administrative law. The first volume of a new edition, by Fleischmann, now enlarged to include constitutional law, appeared in 1910. Prof. von Mohl[4] wrote a scholarly work on administrative law which, though old, is still useful for its theories. For the same purpose, Gneist's work is still important (*supra*, note, p. 173). Larger works, encyclopedias or collections of administrative laws, dealing especially with Prussia, have been published under the general editorship of Bittner (2d ed., 2 vol., 1911), Illing (9th ed., 4 vol., 1905–1908), and Brauchitsch (21st ed., 7 vol., 1911–), and are mentioned here only in passing.

A collection of decisions construing important administrative laws (except those dealing with social insurance) is pub-

[1] Stengel, Karl Michael Joseph Leopold von. Lehrbuch des deutschen verwaltungsrechts. Stuttgart, F. Enke, 1886. 459 p.

[2] Stengel, Karl. Quellensammlung zum verwaltungsrecht des Deutschen Reiches. Leipzig, C. L. Hirschfeld, 1902. 558 p.

[3] Stengel, Karl F. Wörterbuch des deutschen verwaltungsrechts. 2 v. & 3 supplements. Freiburg, 1890–98. New edition, 1910–, by Fleischmann.

[4] Mohl, Robert von. Die polizei-wissenschaft nach den grundsätzen des rechtsstaates. 3rd ed. Tubingen, 1866. 3 v.

lished by Kamptz[1] and Delius. It is a kind of continuation or supplement to the reports of the Prussian supreme administrative court, and is considered of value in connection with the study of questions on administrative law. The third volume appeared in 1910.

Procedure before administrative courts has been the subject of some excellent treatises. That by Dr. O. von Sarwey,[2] although written in 1880, is still valuable for its critical discussion of principles. A critical study of administrative theories and jurisdiction was published by Prof. Tezner,[3] of Vienna (Berlin, 1901). A practical work, free from theoretical and critical discussions, is that by Fritz Kunze,[4] privy councillor, dealing with procedure before courts in all classes of administrative matters. Dr. Georg Bartels[5] has also published a practical work on the subject which contains a useful table of jurisdictions, administrative actions, and remedies. A proposition is now being advanced, particularly by the *Deutsche Juristentag*, for the establishment of an imperial supreme administrative court. The court for the decision of jurisdictional conflicts between the ordinary judicial tribunals and the administrative courts sits in Berlin, and while called on only upon occasion, its decisions are of much importance.

[1] Kamptz und Delius. Die rechtsprechung des Reichs- und Kammergerichts auf den gebieten des öffentlichen rechts, unter berücksichtigung der entscheidungen der oberlandesgerichte und des obertribunals; hrsg. von B. v. Kamptz . . . und Dr. H. Delius . . . Berlin, C. Heymann's verlag, 1906–1910. 3 v. to 1910.

[2] Sarwey, O. von. Das öffentliche recht u. die verwaltungsrechtspflege. Tübingen, Laupp, 1880. 760 p.

[3] Tezner, Friedrich. Die deutschen theorien der verwaltungsrechtspflege. Eine kritisch orientirende studie. Berlin, C. Heymann, 1901. 311 p.

[4] Kunze, Fritz. Das verwaltungstreitverfahren. Berlin, J. Guttentag, 1908. 625 p.

[5] Bartels, Georg. Das verfahren vor den verwaltungsgerichten. Berlin, C. Heymann's verlag, 1907. 230 p.

They are collected in a work by Dr. Otto Stölzel,[1] published in 1897. This court recently passed upon the important von Hellfeld case, which raised the question of the jurisdiction of German courts over a foreign State (Russia) in the matter of a counterclaim, in a suit where that same foreign State was originally the plaintiff. A translation of the decision is printed in the American Journal of International Law, April, 1911, pages 490–519. On this case the opinions of some leading publicists were secured by the German Government and are published in one volume by Profs. Brie,[2] Fischer, and Fleischmann.

A work on extradition, dealing especially with the practice as it affects Germany and German courts, reference being made to treaties and decisions, was published by Dr. Hans Delius.[3] The larger and more scholarly work of Prof. von Martitz,[4] of Berlin, deals with the question from a broader aspect. Consular jurisdiction is dealt with in a well-known work by Dr. König,[5] the seventh edition of which in two volumes appeared in 1909.

A recent work by Kormann[6] on the act of State in administrative law has attracted favorable attention. Prof. Piloty, in an extended review of the book in the *Archiv für öffent-*

[1] Stölzel, O. Rechtsprechung des Gerichtshofs zur entscheidung der kompetenzkonflikte. Berlin, C. Heymann, 1897. 638 p. Supplements 1899 and 1906.

[2] Brie, Fischer & Fleischmann. Zwangsvollstreckung gegen fremde staaten und kompetenzkonflikt in anschluss an den fall Hellfeld. Breslau, M. u. H. Marcus, 1910. 184 p.

[3] Delius, Hans. Das auslieferungsrecht, unter besonderer berücksichtigung der stellung des ausgelieferten vor dem erkennenden gericht, für die praxis der deutschen justizbehörden. Hannover, Helwingsche verlagsbuchhandlung, 1899. 106 p.

[4] Martitz, von. Internationale rechtshilfe in strafsachen. Leipzig, 1888–1897.
2 v.

[5] König, B. W. Handbuch des deutschen konsularwesens. 7th ed. Berlin, Decker, 1909. 2 v.

[6] Kormann, Karl. System der rechtsgeschäftlichen staatsakte. Berlin, J. Springer, 1910. 422 p.

liches recht, volume 28, pages 384–401, considers it one of the most important works on public law published in recent years.

The State as a corporation in public law was the subject of a monograph by Prof. Otto Mayer[1] which appeared in Laband's *Festgabe* above mentioned. Prof. Julius Hatschek,[2] of Heidelberg, has also published an interesting monograph on the legal position of the State as a fiscus.

It is left to the several States of Germany to determine whether redress against acts of the administration and its officers shall be sought in the ordinary tribunals or in specially organized administrative courts. The imperial law of public officers, therefore, does not deal with this jurisdictional question, nor with other questions left to local regulation. A commentary on the most recent statute on the subject, that of May 17, 1907, was published by Dr. A. Schulze[3] (Leipzig, 1908). This statute contains provisions concerning the civil service pensions of public officers and employees. The recent act of May 22, 1910 (*Reichsgesetzblatt* 1910, pp. 798–800), governs the responsibility of the State for the acts of its officers.

An important administrative law is the poor relief act. Poor relief was originally provided for by the law of June 6, 1870, and is now embodied in the provisions of the act of May 30, 1908, in force April 1, 1909 (*Gesetz über den Unterstützungswohnsitz*). It provides that poor destitute Germans must be supported by the community of their domicil, and must be returned to that place. The acquirement of domicil, the rights and duties of the indi-

[1] Mayer, Otto. Die juristische person und ihre verwertbarkeit im öffentlichen recht. Tübingen, J. C. B. Mohr (P. Siebeck), 1908. 94 p.

[2] Hatschek, Julius. Die rechtliche stellung des fiskus im Bürgerlichen gesetzbuche. Eine studie im grenzgebiete des privat- und öffentlichen rechts. Berlin, C. Heymann, 1899. 57 p.

[3] Schulze, A. Reichsbeamtengesetz von 17. 5. 07. Leipzig, Rossberg, 1908. 538 p. (Juristische Handbibliothek, Bd. 276.)

vidual, the administration of the poor relief and related questions are all dealt with by the law. The appendix to volume 33 of the report of the Poor Law Commission of Great Britain, contains a summary of "foreign and colonial systems of poor relief." Considerable space is given to the German system. This report is reprinted in the Parliamentary Papers, and the appendix to volume 33 is also known under its command number, Cd. 5441.

The leading work on the subject is that by Dr. Georg Eger,[1] the sixth edition of which appeared in 1909. The act of March 15, 1909, concerning the effect on public rights of an officially declared destitute person is noticed. Dr. Eger's work is annotated with the decisions of the *Bundesamt* within whose jurisdiction lies the determination of questions arising under this law of poor relief and domicil. The decisions themselves are published officially in a series known as the *Entscheidungen des bundesamts für das heimathwesen*,[2] which was begun in 1873, 42 volumes having been published up to 1910. The decisions are arranged in accordance with the sections of the act which they construe.

The more important administrative laws over which the Empire has jurisdiction, are noted in the works mentioned and are usually contained in small annotated editions in the *Guttentag'sche Sammlung* and other collections of that type.

The most important periodicals on public law are the *Archiv für öffentliches recht*,[3] founded in 1886, edited by

[1] Eger, Georg. Das reichsgesetz über den unterstützungswohnsitz vom 30 Mai 1908, gültig vom 1, April 1909. 6th ed. Breslau, Kern, 1909. 548 p.

[2] Entscheidungen des bundesamtes für das heimathwesen. Edited by von Wohlers...Berlin, F. Vahlen, 1873–1912. 44 v. and cont.

[3] Archiv für öffentliches recht. Freiburg i. B. (etc.) Akademische varlagsbuchhandlung von J. C. B. Mohr (P. Siebeck) 1886–1910. 26 v. and cont.

Profs. Laband, Stoerk, and Mayer; the *Verwaltungs-archiv*,[1] dealing entirely with administrative law, founded in 1892, edited by Schultzenstein and Keil; the *Jahrbuch des verwaltungsrechts*[2] edited by Prof. Stier-Somlo; Soergel's *Jahrbuch der rechtsprechung zum verwaltungsrecht*,[3] in which the decisions of the administrative courts are reported annually from 1909 on; the well-known *Zeitschrift für das privat und öffentliche recht der gegenwart*,[4] edited by Prof. Grünhut, of Vienna; the *Zeitschrift für politik*,[5] edited by Profs. Schmidt, of Freiburg, and Grabowsky, of Berlin, published since 1908; the *Zeitschrift für völkerrecht und bundesstaatsrecht*,[6] founded in 1906, under the editorship of Profs. Kohler of Berlin, and Oppenheim of Cambridge, and devoted in large part to international law; the oldest of all, the *Zeitschrift für die gesammte staatswissenschaft*,[7] founded by Mohl in 1844, now edited by Prof. Bücher of Leipzig; the *Annalen des Deutschen Reichs*,[8] known as *Hirth's Annalen*, founded in 1867; the *Archiv für soziale gesetzgebung und statistik*[9] founded in 1889 and edited

[1] Verwaltungsarchiv. Zeitschrift für verwaltungsrecht und verwaltungsgerichtsbarkeit. Herausgegeben von M. Schultzenstein u. A. Keil. Berlin, C. Heymann, 1893–1910. 18 v. and cont.

[2] Jahrbuch des verwaltungsrechts. Jahrg. 1–6, 1905–1910. Berlin, F. Vahlen, 1907–1911. 6 v. and cont.

[3] Jahrbuch der rechtsprechung zum verwaltungsrecht, enthaltend die gesamte rechtsprechung zum reichs und landesrechtlichen verfassungs-, verwaltungs- und versicherungsrecht. . . 1–3 jahrg., 1907–1910. Stuttgart, Deutsche verlagsanstalt, 1909–1911. 3 v. and cont.

[4] Zeitschrift für das privat- und öffentliche recht der gegenwart. Herausgegeben von Grünhut. Vienna, Alfred Hölden, 1874–1910. v. 1–38 and cont.

[5] Zeitschrift für politik. Hrsg. v. Richard Schmidt und Adolf Grabowsky. Berlin, Heymann, 1908 and cont.

[6] Zeitschrift für völkerrecht u bundesstaatsrecht. Hrsg. v. Josef Kohler u L. Oppenheim. Breslau, J. U. Kern, 1907 and cont.

[7] Zeitschrift für die gesammte staatswissenschaft, founded by Mohl in 1844. Tübingen, H. Laupp, 1845 and cont.

[8] Annalen des Nord-Deutschen Bundes, now Annalen des Deutchen Reichs. Berlin & München, Schweitzer, 1867 and cont.

[9] Archiv für soziale gesetzgebung u. statistik. Tübingen, Mohr, 1889 and cont.

by Dr. Heinrich Braun; and lastly, the *Jahrbuch für gesetzgebung*,[1] founded by Holtzendorff and Brentano in 1872, and edited after 1881 by Prof. Schmoller. The last four periodicals devote more attention to economics than to public law.

MISCELLANEOUS

A few general publications merit attention. The most important are the volumes reporting the meetings of the German Bar Association,[2] founded in 1860 by Prof. Holtzendorff. These volumes, four or five of which appear for each meeting—there have now been 30—constitute a valuable source of information for all current legal problems that occupy the German nation and German lawyers. It is really a periodical of much weight. A report of the proceedings and discussions of the Bar Association, together with its resolutions and the practical results of its debates and their influence on legislation, was published by Judge Thomsen[3] in 1885, on the occasion of the twenty-fifth anniversary of its organization. In 1910, to commemorate the fiftieth year of its existence, Judge Theodor Olshausen[4] prepared a similar work, which gives a synopsis of the proceedings of the association under the different branches of law discussed.

A highly esteemed theoretical work of a general character, upon the development of law through the influence of the

[1] Jahrbuch für gesetzgebung, founded by Holtzendorff and Brentano in 1872, edited after 1881, by G. Schmoller. Leipzig, Duncker & Humblot, 1872 and cont.

[2] Deutscher juristentag. Verhandlungen des 1–30. Deutschen juristentages. Hrsg. von dem schriftführer-amt der ständigen deputation. Berlin, G. Jansen, 1860–1909.

[3] Thomsen. Gesammtbericht über die thätigkeit des Deutschen juristentags in den 25 jahren seines bestehens, 1860–1885. Berlin, Commissions-verlag von J. Guttentag (D. Collin) 1885. 240 p.

[4] Olshausen, Th. Der deutsche juristentag. Berlin, Guttentag, 1910. 501 p.

law speaker, "responsa," and judicial interpretation, was written by Dr. Adolf Stölzel.[1]

A dictionary of English law for German lawyers was prepared by Karl Wertheim[2] in 1899. It may on occasion be found useful in investigating specific subjects in German law.

Attention must also be called to collections of monographs, usually published on the occasion of the decennials of birthdays or doctorate anniversaries of prominent jurists, or the anniversary of important academic events, such as the recent centennial anniversary of the establishment of the University of Berlin, and the five-hundredth anniversary in 1909 of the founding of the University of Leipzig.[3] On these last two occasions the firm of Otto Liebmann published two large works, giving the history of the law faculties, with biographical notes, and including important documents showing the development of the department of law. An account of the history of the faculty of law at Berlin, with biographical and bibliographical notes, appeared in the *Deutsche Juristenzeitung*, 1910, Heft 20, columns 1097–1200. A number of the more important *Festgaben* (jubilee volumes) which have recently appeared, are those dedicated to Prof. Karl Güterbock[4] whose "Bracton and his relation to the Roman law" is well-known to American lawyers; to Prof. Gierke[5] of Berlin, the eminent Germanist;

[1] Stölzel, Adolf. Die entwicklung der gelehrten rechtsprechung. Berlin, Vahlen, 1901–1910. 2 v.

[2] Wertheim, Karl. Wörterbuch des englischen rechts. Berlin, Puttkammer & Mühlbrecht, 1899. 575 p.

[3] Liebmann, O. Die juristische fakultät der Universität Berlin von ihrer gründung bis zur gegenwart. Berlin, O. Liebmann, 1910. 526 p.
Liebmann, O. Festgabe der deutschen juristen-zeitung zum 500 jährigen jubiläum der Univ. Leipzig, 1909.

[4] Festgabe für Dr. Karl Güterbock . . . zur achtzigsten wiederkehr seines geburtstages dargebracht von früheren und den gegenwärtigen angehörigen der fakultät. Berlin, Franz Vahlen, 1910. 640 p.

[5] Festgabe der Berliner juristischen fakultät für Otto Gierke zum doktor-jubiläum am 21. August 1910. Breslau, Marcus, 1910. 3v.

to Prof. Heinrich Brunner,[1] the legal historian; to Prof. Binding,[2] the noted jurist of Leipzig; and to Prof. Kohler,[3] the most versatile legal scholar of the present day.

We can not leave a survey of German legal literature without mentioning the names of jurists, all of whose works may be said to occupy a prominent place in the history of legal development in Germany. The names of Hugo, Savigny, Haubold, Heffter, Zachariae, Mohl, Bluntschli, Beseler, Mommsen, Gneist, Feuerbach, Mittermaier, Goldschmidt, Bekker, Windscheid, Puchta, Jhering, Dernburg, von Bar, Stammler, Wächter, Wach, Laband, Jellinek, Brunner, Gierke and Kohler stand as lasting monuments to the preeminent legal scholarship of the German nation.

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[1] Brunner, Heinrich. Festschrift Heinrich Brunner zum 70. geburtstag dargebracht. Weimar, Bohlau, 1910. 842 p.

[2] Binding, Karl. Festschrift zu Karl Binding zum 70. geburtstag 6. 6. 1911. Leipzig, W. Engelmann, 1911. 2 v.

[3] Rechtswissenschaftliche beiträge. Juristische festgabe des auslandes zu Josef Kohler's 60. geburtstag. Stuttgart, F. Enke, 1909. 202 p.

GLOSSARY OF GERMAN LEGAL TERMS

A vista. Sight bill.
Abhandlung. Essay, treatise.
Abkömmlinge. Descendants.
Abladung. Unloading, delivery, discharge.
Ablauf der Zeit. Expiration or lapse of time.
Ablehnung. Disclaimer, challenge (of a juror).
Ablösungssumme. Redemption sum.
Abschwörung. Abjuration.
Abstrakter Vertrag. Abstract agreement.
Abtretung. The assignment of a right.
Abzahlungsgeschäft. "Hire-Purchase" agreement.
Advokat. Attorney at law.
Aechtung. Outlawry.
Aergerniss. Breach of the peace.
Akkordvertrag. Piece wage.
Akten. Legal papers, documents.
Aktiengesellschaft. Share company or stock company.
Aktionnär. Stockholder, shareholder.
Alimente. Alimony.
Altersversicherung. Old-age insurance.
Amortisation. Amortisation, legal extinction (of a bill).
Amtsanwalt. Official, government, or district attorney.
Amtsgericht. District court.
Amtsunfähigkeit. Incapacity to hold public office.
Amtsunterschlagung. Embezzlement of public funds.
Amtsvergehen. Delinquency in office, malversation in the discharge of official duties.
Aneignung. Acquisition of ownership.
Anerbenrecht. Right of inheritance under the local law of a district.
Anerkannte Rechnungsaufstellung. Account stated.
Anerkennung. Acknowledgement, legitimation, authentication.
Anfall der erbschaft. Devolution of the inheritance.
Anfall des vermächtnisses. Devolution of a legacy.
Anfechtbar. Voidable.
Anfechtungsgegner. Party subject to having his act declared voidable.
Anfechtungs(recht)gesetz. Law as to avoidance of transactions intended to defeat creditors.
Angeklagter. Accused person, defendant.

Angemessene Frist. Reasonable time.
Angeschuldigter. Accused person.
Angewiesener. Drawee.
Anklagebeschluss. Indictment.
Anklageschrift. Indictment.
Ankindung. Adoption.
Anmeldung. Notice, notification.
Annahme. Acceptance.
Anspruch. Claim, right of action.
Anstalten. Institutions.
Anstifter. Abettor.
Anteilsberechtigte Abkömmlinge. Participating descendants.
Antrag. Information, proposal, motion.
Antragsdelikt. Offense which can be prosecuted only on the relation or information of the person injured.
Anwachsungsrecht. Rights accruing by reason of survivorship.
Anwalt. Attorney, advocate.
Anweisender. Drawer.
Anweisung. An order to pay a sum of money, or to deliver a thing.
Anweisungsempfänger. Payee.
Anzeige. Information, notification.
Arbeiterrecht. Labor laws, laws governing workmen and employes.
Arbeitsvertrag. Labor contract.
Arglist. Aggravated liability attached to intentional default.
Arglistig. With intent to deceive.
Arglistige Täuschung. Misrepresentation with intent to deceive.
Armenrecht. Right to appear as poor person, judicial assistance to a poor litigant.
Aufgebot. Public notice.
Aufgebotsverfahren. Procedure by public summons, proceeding by public citation.
Aufhebung der ehelichen Gemeinschaft. Dissolution of the conjugal community, or judicial separation.
Auflage. (1) A burden imposed on a donee or legatee, testamentary burden; (2) edition.
Auflassung. Conveyance by agreement of real property.
Auflösung. Dissolution.
Aufrechnung. An independent right of set-off against a creditor, before action brought; settlement, adjustment, squaring of an account.
Aufschiebende Bedingung. A condition precedent.
Aufschub. Suspension (of sentence).
Aufsichtsrat. Board of supervision.
Auftrag. Mandate, or agreement for unremunerated services.
Auftraggeber. The mandant, at whose request unremunerated services are given.
Auseinandersetzung. Right of co-heir to claim partition of the estate; liquidation of association or corporation.

Ausfertigung. Drawing up, execution (of a deed or instrument).
Ausführungsgesetz. Law in execution of another law or act; statute providing for the introduction of the new law
Ausgleichungspflicht. Hotchpot liability.
Ausladung. Discharge, unloading.
Auslagen. Disbursements.
Ausländer. Alien.
Auslegung. Construction.
Auslieferung. Extradition.
Auslobung. A public promise of a reward for a specified act.
Ausscheiden. Withdrawal or retirement (of a partner, etc.).
Ausschlagung der erbschaft. Disclaimer of an inheritance.
Äusserungstheorie. "Doctrine of utterance," that in making a contract, the intent to be bound is communicated upon dispatch of the message.
Ausstattung. (1) The particular way in which goods are packed or made up (trade-mark cases). (2) Property transferred by a parent to a child, for the purpose of founding a home or establishing a position in life for such child, advancement.
Aussteller. Drawer, maker.
Aussteuer. "Outfit," usually provided by a father on the marriage of his daughter.
Auswanderung. Emigration.
Ausweisung. Expulsion.
Auszüge. Abstracts.
Bankdepotgesetz. Law regulating deposit of securities with banks, etc.
Barraterie. Barratry.
Beamte. Public officer.
Beauftragte, der. Mandatary or person who performs unremunerated services for another.
Bedingtes Rechtsgeschäft. An act subject to a condition.
Bedingung. A condition.
Bedingung, auflösende. A condition subsequent.
Bedingung, aufschiebende. A condition precedent.
Bedingung, notwendige. A necessary condition.
Bedingungen, uneigentliche. Unreal conditions (conditions in appearance only).
Bedingung, unmögliche. Impossible condition.
Bedrohung. Threat.
Beförderung. Conveyance.
Befrachter. Charterer.
Befreite Vormundschaft. Exempted guardianship.
Befristetes rechtsgeschäft. Act subject to a stipulation as to time.
Begnadigung. Pardon.
Begünstiger. Accessory, abettor.
Begünstigung einzelner gläubiger. Favoring one creditor as against others, paying preferred creditor.
Beischlaf. Cohabitation.

Beitragspflichtige Werthe. Contributory values.
Belastetes Grundstück. Servient tenement.
Bereicherung, ungerechtfertigte. Unjustified benefits, unjust enrichment.
Bergelohn. Reward in the case of salvage.
Bergrecht. Mining law.
Bergung. Salvage.
Berufung. Appeal (of a decision of first instance).
Bescheinigung. Attestation.
Beschlagnahme. Sequestration, seizure.
Beschluss. Resolution, decision, decree.
Beschränkte Geschäftsfähigkeit. Restricted disposing capacity of a person.
Beschränkte persönliche Dienstbarkeiten. Restricted (limited) personal servitudes.
Beschuldigter. Prisoner, defendant.
Beschwerde. Complaint; Appeal from a Beschluss (decree), generally on facts and law.
Beseitigung. Annulment or revocation.
Besitzdiener. Possessor's servant, or he who has possession for another.
Besitzgehilfe. Possessor's assistant, or he who has possession for another.
Bestallung. Certificate of appointment of a guardian.
Bestandteil. Component part.
Bestechung. Bribery.
Besteller, der. The employer.
Bestimmungsort. Place of destination.
Betrug. Fraud, deceit.
Betrüglicher Bankerott. Fraudulent bankruptcy.
Beurkundung. Verification, authentication (public).
Bevollmächtigter. Agent or attorney with full powers.
Bewegliche Sachen. Movables.
Beweis. Information, proof.
Beweisaufnahme. Taking of testimony.
Bezogener. Drawee.
Bilanz. Treasury balance, balance sheet.
Bildende Künste. Formative arts (copyright).
Billigkeit. Equity, justice.
Binnenschiffahrtsrecht. Inland navigation.
Blaubücher. Blue books.
Blutsbrüderschaft. Cognates (fraternity by blood).
Blutschande. Incest.
Bodmerei. Bottomry.
Börsengesetz. Stock Exchange Act.
Bösliche Schädigung. Damage done recklessly.
Böswilligkeit. Aggravated liability attached to intentional default.
Bote. A Messenger.
Botschafter. Ambassador.

Brandstiftung. Arson.
Buchforderung. Uncertificated claim.
Büdnerrecht. Right of cottager, which is heritable.
Bundesstaat. State (of the German Confederation).
Bundesstaatsrecht. Constitutional law of the (German) Confederation.
Bürge. Surety.
Bürgerliches Gesetzbuch (abbreviated B. G. B.). Civil Code.
Bürgerliches Recht. Civil law.
Bürgschaft. Guarantee, surety, bail.
Busse. Mulct, assessment of money damages, fine.
Chartepartie. Charter party.
Chikaneverbot. Prohibition of chicanery, or prohibition of the exercise of a right which can have no purpose except the infliction of injury on another.
Creditauftrag. An instruction to give credit (to a third party).
Darlehen. A loan of money or fungibles.
Darlehnsgeschäft. Loan transaction.
Delikt. Tort.
Despacheure. Average staters (Average adjusters who act in the case of general average of a ship's cargo).
Destinatär. Cestui que trust.
Diebstahl. Larceny.
Dienendes Grundstück. Servient tenement.
Dienstbarkeiten. Servitudes.
Dienstberechtigte, der. Employer.
Dienstleistung, der zur, Verpflichtete. Employee.
Dienstvertrag. An agreement for services.
Dinglicher Vertrag. Real agreement (referring to property).
Dingliches Recht. Real right (referring to a tangible thing).
Dispachirung. Adjustment.
Doppelehe. Bigamy.
Draufgabe. Payment of earnest money.
Draufgeld. Earnest money.
Dreissigsten, Recht des. The right (in the absence of a contrary testamentary disposition) of such of the members of the family of the deceased as belong to his household at the time of his death, to be maintained during the first 30 days after the death of the deceased, in the same manner as they were maintained by the deceased, and to use the dwelling place of the deceased and the household articles contained therein.
Drohung. Threats.
Durchstreichung. Cancellation.
Ediktalzitation. Service (or citation) by publication.
Ehe. Marriage.
Ehebruch. Adultery.

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Ehegüterrecht. Matrimonial régime, or effect of a marriage on the property owned by each of the spouses at the date of the marriage or subsequently acquired.

Eheliche Lebensgemeinschaft. Conjugal community.

Eheliches Güterrecht. Matrimonial régime, or effect of the marriage on the property owned by each of the spouses.

Ehelichkeitserklärung. Legitimation by order of a public authority.

Ehescheidung. Divorce.

Eheschliessung. Celebration of marriage.

Ehevertrag. Marriage contract.

Ehrenannahme. Acceptance for honor.

Ehrenkränkung. Slander, defamation.

Ehrenrechte. Civil rights and privileges.

Eid. Oath.

Eigenhändiges Testament. Holograph will.

Eigensbesitzer. Proprietary possessor.

Eigentum. Ownership.

Eigentum zur gesamten Hand. Coownership.

Eigentümerhypothek. A charge in favor of the owner of mortgaged property.

Eigentümergrundschuld. A charge in favor of the owner of mortgaged property.

Eigenwechsel. Promissory note.

Einführungsgesetz. Law by way of introduction, or introductory statute.

Eingebrachtes Gut. Property of the wife which under normal circumstances comes under the husband's power of management; contributed property.

Eingetragener Verein. Registered society.

Einigung. Real agreement (referring to tangible property).

Einrede. Exception, plea, caveat.

Einrede der Vorausklage. Plea of "Beneficium excusionis," or right of the surety to require the creditor to prove that he has obtained a judgment against the principal debtor and that his attempt to enforce it was unsuccessful.

Einspruch. Exception, objection.

Einstweilige verfügung. Provisional decree.

Eintragungsbewilligung. An authority for registration.

Einwilligung. Assent, consent; approval.

Eisenbahnrecht. Railroad law.

Elterliche Gewalt. Parental power.

Empfänger. Receiver, donee.

Empfangsbedürftige Willenserklärung. A declaration of intention requiring communication.

Empfangstheorie. "Doctrine of receipt," that in making a contract, communication of the intent to be bound is incomplete until the message is *received* by the addressee.

Endurtheil. Definitive or final sentence.
Entführung. Abduction.
Entlassung. Discharge.
Entmündigung. Placing under guardianship.
Entmündigungsrecht. Law of establishment of guardianship over person incapable of managing his own affairs.
Entscheidung. Decision, judgment, award, verdict.
Erbbaurecht. Heritable building right.
Erbe. Heir.
Erbfall. Accrual of inheritance.
Erbfolge. Succession.
Erbfolge nach Stämmen. Succession per stirpes.
Erbgut. Hereditament.
Erbpacht. Heritable lease.
Erbschaft. Inheritance.
Erbschaftsbesitzer. Possessor of the inheritance.
Erbschaftskauf. An obligatory agreement by which the heirs jointly agree to deliver or transfer to the purchaser the specific objects forming part of an estate.
Erbschein. Certificate of inheritance.
Erbteil. Share in an inheritance.
Erbunwürdigkeit. Unworthiness to inherit.
Erbvertrag. Contract of inheritance.
Erbverzicht. Renunciation of inheritance.
Erfüllung Zug um Zug. Contemporaneous performance.
Erfüllungshalber. On account of performance.
Erfüllungsinteresse. Interest in the performance of a contract.
Erfüllungsort. Place of performance.
Erfüllungsstatt. In lieu of performance.
Ergänzung des Pflichtteils. Augmentation of the compulsory portion of the heir.
Ergänzungsgeschworenen. Supplementary jurors.
Erkenntnis. Judgment, award, decision.
Erklärungstheorie. Doctrine of "Declared intention," as binding a person, regardless of his actual intention.
Ermächtigung. Authorization.
Ermittelungen. Discovery, inquiry.
Erneuerungsschein. Renewal coupon.
Eröffnungsprotokoll. Minutes of the proceedings, in probate of a will.
Erpressung. Extortion.
Errichtungsprotokoll. Minutes of the proceedings, in executing a will in public form.
Errungenschaftsgemeinschaft. Régime of community of income and profits.
Ersatzerbe. Substitutional heir.
Erschlichene Ehe. Marriage in which one party has been guilty of concealing a legal obstacle to it or has been guilty of fraud in inducing the other party to contract it.

Erschwerte Amtsunterschlagung. Falsification of official accounts.
Ersitzung. Acquisition of ownership by long possession; usucaption.
Erwerb von Todeswegen. Acquisition of property *mortis causa*.
Erwerbs- und Wirtschaftsgenossenschaft. Cooperative society.
Fahrlässigkeit. Negligence.
Fahrnisgemeinschaft. Community of movables.
Falsche anschuldigung. False accusation.
Faustpfand. Pignus (Pledge).
Fehlerhafter Besitz. Faulty possession.
Feldesstreckung. A plan showing the exact position and dimensions of a mine intended to be acquired.
Fensterrecht. Mutual rights of neighbors concerning windows.
Festsetzung. Assignment (of dower, etc.), establishment.
Feststellungen. Taxation (of costs), determination.
Festungshaft. Confinement in a fortress.
Firma. Firm name.
Fiskus. The State as a business corporation.
Fixgeschäft. Business on fixed terms.
Forderung. Claim, demand, credit.
Forderungsrecht. Chose in action, demand.
Forstrecht. Forest law or regulations.
Fortgesetzte Gütergemeinschaft. Continued community of matrimonial property.
Frachtbrief. Way-bill, bill of lading.
Frachtführer. Common carrier.
Frachtgeschäft. Business of carriers.
Frachtverlust. Loss of freight.
Frachtvertrag. Contract of affreightment or charter party.
Freie Verfügung. Free disposition.
Freies Vermögen. Free property belonging to a child, in which the usufruct of the parent is barred; privileged property.
Freiheitsberaubung. False imprisonment, unlawful detention.
Freisprechung. Acquittal.
Freispruch. Acquittal.
Freiwillige Gerichtsbarkeit. Non-contentious jurisdiction.
Freizeichen. A trade-mark in general use.
Friedensbruch. Breach of the peace.
Fruchtabtreibung. Abortion.
Früchte. Fruits.
Früchte eines Rechtes. Fruits of a right.
Früchte einer Sache. Fruits of a thing.
Fundklage. Action of trover.
Gastwirt. Innkeeper.
Gebrauchsmuster. Useful model.
Gebühren. Fees, costs, dues.
Gefälligkeitswechsel. Accommodation bill of exchange or note.
Gefängnis. Prison, jail.

Gegen die guten Sitten. Contra bonos mores.
Gegenanspruch. Counterclaim.
Gegenforderung. Counterclaim.
Gegenseitiger Vertrag. Reciprocal agreement.
Gegenstand. Object.
Gegenstandrecht. Law of things (property).
Gegenvormund. Supervising guardian.
Gehülfen. Assistants.
Geisteskranke. Insane persons, mentally defective persons.
Geiteskrankheit. Unsoundness of mind.
Geistesschwäche. Mental infirmity.
Geldstrafe. Money fine.
Gelegenheitsgesellschaft. Syndicate.
Gemeindeverwaltung. Local administration.
Gemeindevorsteher. Chief communal officer.
Gemeindewaisenrath. Communal Orphan Council.
Gemeinschaft des beweglichen Vermögens und der Errungenschaft. Community of movables and of income and profits.
Gemeinschaft nach Bruchteilen. Community (common ownership) by undivided shares.
Gemainschaft zur gesamten Hand. More intimate community of goods (e. g. of husband and wife, partnership, etc.).
Gemeinschaftlicher erbteil. A joint share in an inheritance.
Gemeinschaftliches testament. Joint will.
Genehmigung. Ratification.
Generalversammlung. General meeting of the stockholders.
Genossenschaft. Association.
Gerechtigkeit. Equity, justice.
Gerichtliche Beurkundung. Authentication by public act.
Gerichtsakten. Judicial acts; written proceedings; records; rolls of court.
Gerichtsamt. Court of justice.
Gerichtsbar. Justiciable.
Gerichtsbarkeit. Jurisdiction.
Gerichtsbarkeit, freiwillige. Non-contentious jurisdiction.
Gerichtsbescheid. Decision, decree, sentence of the court.
Gerichtsbeschluss. Decision, decree, sentence of the court.
Gerichtshandel. Action, law-suit, case, legal proceedings.
Gerichtshof. Court of justice.
Gerichtsordnung. Rules of court.
Gerichtsschreiber. Clerk of the court.
Gerichtssprache. Legal terminology.
Gerichtsstand. Subject to a court or forum.
Gerichtsverfahren. Judicial proceedings.
Gerichtsverfassung. Judicial organization, judiciary.
Gerichtsverfassungsgesetz. Judiciary Act.
Gerichtsverhandlung. Judicial proceedings.

Gerichtsverwaltung. Administration of justice.
Gerichtsvollzieher. Bailiff, sheriff.
Gerichtswesen. Judicial affairs, judiciary.
Gerichtszwang. Jurisdiction.
Gesammtgläubiger. Joint creditors.
Gesammtgrundschuld. A collective charge on several independent parcels of property.
Gesammtgut. Common property.
Gesammtgutverbindlichkeiten. Liabilities of the common property.
Gesammthänder. Joint owners of property.
Gesammthypothek. A collective charge on several independent parcels of property.
Gesammtprokura. Collective procuration or power of attorney.
Gesammtschuldner. Joint debtors.
Gesammtschuldnerschaft. Bankruptcy.
Gesammtstaat. Federative empire.
Geschäftsfähigkeit. Full disposing capacity.
Geschäftsführer. Manager, voluntary agent.
Geschäftsführung ohne Auftrag. Rendering of voluntary services, or the conduct of business on behalf of another without his request.
Geschäftsherr. Involuntary principal.
Geschworener. Juror, juryman.
Geschwornenbank. Jury box.
Geschwornenobmann. Foreman of the jury.
Geschwornenverzeichnis. Array.
Gesellschaft. Non-mercantile partnership.
Gesellschaft mit beschränkter Haftung. Partnership with limited liability.
Gesellschafter. Partners, share-holders.
Gesellschaftsvermögen. Partnership property.
Gesellschaftsvertrag. Articles of association.
Gesetzgeber. Lawgiver, legislator.
Gesetzgebung. Legislation.
Gesetzliche Erben. Statutory heirs.
Gesetzlicher Erbteil. Statutory portion (of an inheritance).
Gesetzlicher Vertreter. Statutory agent.
Gesetzliches Güterrecht. Statutory régime of matrimonial property.
Gewährfrist. Specified period of warranty.
Gewährleistung. Warranty.
Gewerbeordnung. Trade Regulations Act, Industrial Code.
Gewerberecht. Trade laws; industrial regulations.
Gewerbeunfallversicherungsgesetz. Industrial Accident Insurance Law.
Gewerbsmässig. Professionally.
Gewinnanteilsscheine. Dividend warrants.
Gewohnheitsrecht. Customary law.
Giro. Endorsement.
Gläubiger. Creditor (person from whom any act of performance is due).

Gläubigeranfechtung. Creditors' suits, or seizure to prevent assignment in fraud of creditors.
Gläubiger-Verzug. Creditor's delaying or refusal to accept the performance tendered by the debtor.
Gotteslästerung. Blasphemy.
Grabschändung. Grave-robbing.
Grobe Fahrlässigkeit. Gross negligence.
Grosse Haverei. General average.
Grund, wichtiger. Cogent ground.
Grundakten. The original or an authenticated copy of every document filed in support of the application for registration, retained at the registry.
Grundbuchblatt. Folio in a register.
Grundbuchordnung. Land Registry Act.
Grunddienstbarkeit. Real servitude.
Grundschuld. Land charge.
Grundstück des Berechtigten. Dominant tenement.
Grundstücke. Immovables, real estate.
Grundstückpfandrechte. Charges (mortgage, land and annuity) on real property.
Gründungsfonds. Foundation fund.
Gut. Goods, wares and merchandise.
Gutachten. Opinion.
Guter glaube. Good faith.
Güterrechtsregister. Marriage property register.
Gütertrennung. Separation of goods.
Hafengelder. Port dues.
Haft. Detention, arrest.
Haftbefehl. Order of arrest, writ of attachment against the person.
Haftpflicht. Liability for damages.
Haftung. Liability; responsibility.
Hammerschlagrecht. The right of the owner of a parcel of land to have access to the neighboring land for the purpose of affixing planks to buildings standing on his own land.
Handelsgericht. Court of commerce.
Handelsgeschäft. Mercantile transaction.
Handelsgesellschaft. Mercantile association, including corporation as well as the various kinds of partnership.
Handelsgesellschaft, offene. A mercantile partnership with unlimited liability for all the partners.
Handelsgesetzbuch. Commercial Code.
Handelskauf. Purchase and sale.
Handelsmäkler. Mercantile broker.
Handelsmarken. Trademarks.
Handelsrecht. Commercial law, mercantile law.
Handelsregister. Register of firms, mercantile associations and traders; Trade register.

Handgeld. Earnest money.
Handlungsagent. Mercantile agent.
Handlungsfähigkeit. Capacity for incurring liability in respect of unlawful acts as well as capacity for acts-in-law
Handlungsgehüfle. Clerk.
Handlungslehrling. Apprentice.
Handlungsvollmacht. Ordinary mercantile power of agency.
Hauptmängel. Principal defects.
Hauptsache. Principal thing.
Hauptverfahren. Examination in chief, final hearing or trial.
Hauptverhandlung. Trial.
Hausfriedensbruch. Breach of privacy or peace of the house and home.
Hehlerei. Receiving of stolen goods.
Heimatshafen. Home port.
Heimatwesen. Domicil law (poor relief).
Heiratsregister. Marriage register.
Heiratsversprechen. Promise of marriage.
Hemmung der Verjährung. Suspension of prescription.
Herrschendes Grundstück. Dominant tenement.
Heuer. Hire, wages.
Heuervertrag. Contract of hire.
Hinterlegung. Lodgment with a public authority.
Hochverrat. Treason.
Höhere Gewalt. Act of God.
Honorant. Acceptor (of a bill) for honor.
Hülfeleistung. Maritime assistance.
Hülfsleistung in Seenoth. Rendering assistance in cases of distress at sea.
Hülfslohn. Salvage award, reward in the case of maritime assistance.
Hypothek. Hypotheca; hypothecary charge; mortgage.
Hypothekenbankgesetz. Mortgage bank law.
Imaginairer Gewinn. Speculative profits.
Immaterialrechte. Incorporeal rights, patent right, copyright, etc.
Immobiliarvertrag. Contract for real property or immovables.
Inhaber (bei Wertpapieren). Bearer, holder (of negotiable instruments.)
Innung. Guild, trade union.
Invalidenversicherungsgesetz. Invalidity Insurance Act.
Inventar. (1) inventory, (2) farm stock.
Inventarerrichtung. Filing of the inventory (of an estate).
Inventarfrist. Inventory period.
Irrtum. Mistake.
Jagdgesetze. Game laws.
Jahreslisten. Annual jury lists.
Juristentag. Law meeting.
Juristische person. Juristic or legal person; corporation.
Justizverwaltung. Judicial organization, administration of justice.
Kammergericht. Supreme court of judicature in Prussia.
Kaplaken. Primage.

Kartellen. Trusts.
Kauf auf Probe. Sale on approval.
Kauf nach Probe. Sale according to sample.
Kaufmann. Mercantile trader.
Kaufmännischer Verpflichtungsschein. Mercantile promise to pay or deliver.
Kaufmännisches Zurückbehaltungsrecht. Mercantile lien.
Kaution. Bail, security.
Kennen musste. Ought to have known.
Kinder. Children (sons and daughters).
Kinderraub. Kidnapping.
Kirchenrecht. Ecclesiastical or canon law.
Klage. Complaint, declaration, suit, claim.
Klageschrift. Bill of complaint; libel (in admiralty).
Kodizill. Codicil.
Kollektivprokura. Collective procuration or power of attorney.
Kommanditgesellschaft. Commandite partnership, with limited liability for only one or some of the partners.
Kommanditist. A partner liable for a fixed amount only.
Kommissionär. Commission merchant.
Kommissionsgeschäft. Agency.
Konkurs. Bankruptcy.
Konkursordnung. Bankruptcy Act.
Konnossement. Bill of lading.
Kontokorrent. Running account.
Kontokorrent Vertrag. Mercantile agreement.
Konventionalstrafe. Conventional penalty.
Körperschaften. Corporations.
Körperverletzung. Bodily injury.
Korrespektive Verfügungen. Correspective testamentary dispositions of husband and wife.
Korrespondentrheder. Ship's husband or managing owner
Korrespondierender Reeder. Ship's husband or managing owner.
Kosten. Costs.
Kostenvorschuss. Advance of the costs, security for costs.
Kraftloserklärung. Amortization.
Krankenversicherung. Insurance against sickness.
Kreditauftrag. An instruction to give credit to a third party.
Kündigung. Notice.
Kuppelei. Pandering.
Küstenschiffahrt. Coasting trade.
Ladung. Cargo; service of process.
Lagergeschäft. Warehousing.
Lagerhalter. Warehouseman.
Landesgesetz. Local law of a province or state.
Landgericht. Superior Court having appellate jurisdiction in certain cases over the Amtsgericht (District Court).

Landgut. A farm.
Laufende Rechnung. Running account.
Lehnsrecht. Feudal law.
Leibgedinge. Dower, settlement in jointure.
Leibrente. Annuity (any periodical acts of performance).
Leibrentenvertrag. Annuity agreement.
Leichterfahrzeug. Lighter, barge.
Leihe. Loan for use.
Leistung. Performance.
Leistungsort. Place of performance.
Letztwillige Verfügung. Testamentary disposition.
Letztwillige Zuwendung. Testamentary gift.
Lichtrecht. Rule as to the mutual rights of neighbors concerning access of light.
Liegegeld. Demurrage.
Liquidation. Liquidation, balancing accounts on dissolution (of partnership).
Lootsengeid. Pilotage dues.
Löschungsbewilligung. An authority for cancellation.
Mäkler. Broker.
Maklervertrag. Brokerage agreement.
Meineid. Perjury.
Menschenraub. Kidnapping.
Menschentötung. Homicide.
Mietvertrag. Ordinary lease.
Mietzeit. Term of a lease.
Mildernde Umstände. Extenuating circumstances.
Minderjährige. Infants.
Minderkaufmann. Lesser mercantile trader.
Minderung. Reduction of the purchase price.
Mit Gewalt. By force.
Mitbesitz. Joint possession.
Mitbürgen. Co-sureties.
Miteigentum. Co-ownership or tenancy in common.
Miterben. Co-heirs.
Mitgift. Dowry.
Mittelbarer Besitz. Indirect possession.
Mord. Murder.
Motiven. Motives, whys and wherefores.
Mündel. Ward.
Mutung. Mining claim.
Nacherbe. Reversionary heir.
Nachlass. Estate of deceased person.
Nachlassgericht. Court dealing with the estates of deceased persons.
Nachlassgläubiger. Creditor of the estate.
Nachlasspfleger. Curator of the estate.
Nachlassverbindlichkeiten. Liabilities of the estate.

Nachlassverwalter. Administrator.
Nachlassverwaltung. Administration of an estate by an administrator appointed by the competent Probate Court.
Nachtrag. Codicil.
Nachweis. Information, proof.
Nachzettel. Codicil.
Nebenkläger. Co-plaintiff, joint plaintiff.
Nichtig. Void.
Nichtigkeit. Nullity, invalidity.
Nicht rechtsfähiger verein. Unincorporated society.
Niederlassungsrecht. Law of domicil.
Niessbrauch. Usufruct.
Niessbraucher. Usufructary.
Nominalaktie. Personal share.
Notar. Notary.
Notarielle Beurkundung. Authentication by public act.
Nothafen. Port of refuge.
Nötigung. Duress.
Notwehr. Necessary defense; self-defense.
Notwendige Bedingung. Necessary condition.
Notzucht. Rape.
Nutzen. Benefit, profit.
Nutzniesser. Cestui que trust, beneficiary.
Nutzungen. Profits, emoluments.
Nützungspfandrecht. Antichresis.
Oberlandesgericht. Court of appeal, having appellate jurisdiction in certain cases over the Landgericht (superior court); highest court of a State; the court immediately below the Reichsgericht at Leipzig.
Oberverwaltungsgericht. Highest administrative court.
Obligatorischer Vertrag. Obligatory agreement.
Obligatorisches Recht. Obligatory right.
Obmann. Foreman (of a jury).
Offene Handelsgesellschaft. A mercantile partnership with unlimited liability for all the partners.
Öffentlich Beglaubigt. Publicly attested.
Öffentliche glaube des grundbuchs. Public faith of the land register.
Öffentliche versteigerung. Public auction.
Ohne rechtlichen Grund. Without a sufficient legal ground.
Ordnung. Rule, regulation, order.
Ortsgebräuche. Local customs.
Pachtvertrag. Usufructary lease.
Pachtzeit. Term of a lease.
Pandektenlehrbücher. Systematic books on modernized Roman law.
Partei. Party (to an action at law).
Partikularrecht. Local law.
Patentgesetz. Patent law.
Personenstandsgesetz. Registration of personal status act (births, deaths, marriages, etc.).

Persönlich haftender Gesellschafter. Partners who are personally liable.
Pfand. Pledged object.
Pfandgläubiger. Pledgee.
Pfandleiher. Pawnbroker.
Pfandmissbrauch. Misappropriation of articles pledged with a pawnbroker or other pledgee.
Pfandrecht. [Right of] pledge.
Pfändung. Seizure of pledged property by an execution creditor.
Pfändung und Überweisung. Attachment and assignment, a process of enforcing judgment which corresponds to obtaining a garnishee order.
Pflegebefohlener. Ward, charge.
Pflegebestellung. Appointment of a guardian or trustee.
Pflegeeltern. Foster parents.
Pfleger. Curator.
Pflichtteil. Compulsory portion (of an inheritance).
Pflichtteilsberechtigter. Compulsory beneficiary.
Police. Policy of insurance.
Polizeiaufsicht. Police supervision.
Privatkläger. Private accuser.
Prokura. Power of procuration.
Provision. Commission, fee.
Prozess. Cause, action at law, legal proceeding.
Quittung. Receipt.
Rangordnung der pfandrechte. Order of preference of pledges.
Raub. Robbery.
Reallast. Perpetual charge [on land].
Rechtsanwalt. Attorney-at-law.
Rechtsanwendung. The application of law by the judge.
Rechtsencyclopädie. Legal encyclopedia, juristic survey.
Rechtsfälle. Cases.
Rechtsgang. Legal procedure.
Rechtsgebiete. Jurisdiction, fields for legal action.
Rechtsgeschäft. A manifestation of the human will intended to create, transfer, or extinguish a right recognized by law; juristic act.
Rechtsgeschichte. Legal history.
Rechtshängigkeit. Pendency of action.
Rechtshilfe. Judicial assistance in the administration of justice.
Rechtslehre, allgemeine. General theory of law.
Rechtsmittel. Legal remedy, legal means of redress.
Rechtspflege. Administration of justice.
Rechtsprechung. Jurisprudence, court decisions.
Rechtsquellen. Sources of law.
Rechtsspruch. Sentence, judgment, verdict, adjudication.
Rechtsstreit. Cause, Action at law.
Rechtsverhältniss. Legal relation or position.
Rechtswidrig. Unlawful.
Rechtswissenschaft. Legal science, jurisprudence.

Registerhafen. Home port.
Reichsanwalt. District attorney, public prosecutor.
Reichsgericht. Supreme Court of the German Empire at Leipzig.
Reichsgesetz. Federal or imperial law.
Reichshaftpflichtgesetz. Employers' Liability Act
Reichsversicherungsamt. Imperial Insurance Office.
Reichsversicherungsordnung. Workmen's Insurance Code.
Rentengüter. Perpetual rent charged on each separate parcel.
Rentenschuld. Annuity charge.
Respekttag. Day of grace.
Revision. Appeal, review, new trial.
Revisionsschrift. Printed case on appeal.
Rheder u. Rhederei. Owner and co-owners of vessels.
Rhederei. Common ownership of ships; shipowners' company.
Rückfall. Reversion, devolution, escheat.
Rückversicherung. Reinsurance.
Rückwechsel. Return draft, re-exchange.
Rückverweisung. Renvoi.
Sachbeschädigung. Injury to property.
Sachen. Things.
Sacheninbegriff. Aggregate of things.
Sachleihe. Gratuitous loan.
Sachverständiger. Expert.
Sammlung von Rechtsprüche. Reports.
Schadenersatz. Damages, Compensation.
Schatz. Treasure trove.
Schenkung. Gift.
Schenkung unter Auflage. Gift subject to a burden.
Schiedsrichter. Arbitrator.
Schiedspruch. Arbitral award, decision, decree.
Schiffahrt. Navigation, shipping.
Schiffer. Master (of a vessel).
Schiffsbesatzung. Ship's company, crew.
Schiffszubehör. Ship's accessories and appurtenances.
Schlägerei. Affray, assault.
Schlepplohn. Towage.
Schlüsselgewalt. "Power of the keys" (Power of the wife to make contract binding on the husband).
Schlussvorträge. Closing arguments.
Schlusszettel. Bought and sold note.
Schmähschrift. Libel.
Schöffengericht. Court of inferior jurisdiction having one professional and two lay judges or assessors.
Schöffenrichter. Lay judge or lay assessor in the Schöffengericht.
Schuld. Debt (act of performance due from one person to another).
Schuldanerkenntniss. Acknowledgment of debt, abstract acknowledgment.
Schuldforderung. Claim, demand.

Schuldner. Debtor.
Schuldner-verzug. Debtor's delay, or failure to perform his promise.
Schuldrecht. Law of obligations.
Schuldsache. Action for debt.
Schuldschein. Acknowledgment of a debt, bond.
Schuldübernahme. Assumption of an obligation.
Schuldverhältniss. Obligatory relation.
Schuldverpflichtung. Liability, obligation.
Schuldverschreibung. Bond, note of hand.
Schuldverschreibung auf den Inhaber. Obligation to bearer or holder.
Schuldversprechen. Promise of debt, abstract promise.
Schuligerklärung. Conviction.
Schürfrecht. Right of search.
Schwurgericht. Jury court, court of assizes.
Seenoth. Distress at sea.
Seeraub. Piracy.
Seerecht. Maritime law, shipping, admiralty.
Seetriftige Güter. Wreckage or goods taken out of an abandoned ship.
Seeuntüchtigkeit. Unseaworthiness.
Selbsthilfe. Self-help.
Selbstschuldner. Principal debtor.
Selbstverteidigung. Self-defense.
Sicherheit. Security.
Sicherheitshypothek. Cautionary hypothecary charge.
Sicherheitsleistung. Furnishing of sureties.
Sicherheitsübereignung. Transfer of ownership by way of security.
Sicherungshypothek. Cautionary hypotheca.
Solawechsel. Promissory note.
Sondergut. Separate property of spouses, which is non-privileged.
Sorgfalt. Diligence.
Spediteur. Forwarding agent.
Speditionsgeschäft. Forwarding agency.
Staatsangehörigkeit. Nationality.
Staatsanwalt. District attorney; public prosecutor.
Staatsrecht. Public law.
Stadt. City, municipality.
Städtische. Municipal.
Standesbeamter. Registrar.
Standesmässiger Unterhalt. Maintenance suitable to the station in life.
Steckbrief. Order of arrest, warrant.
Stellvertretung. Representation.
Stiftung. Foundation.
Stiftungsurkunde. Act of foundation.
Stille Gesellschaft. Dormant partnership.
Störung. Nuisance, disturbance, infringement, encroachment.
Strafbefehl. Order to inflict fine or punishment.
Strafbescheid. Penal sentence by administrative authorities.

Strafe. Penalty.
Strafgesetzbuch. Penal Code.
Strafkammer. Criminal court.
Strafprocess. Criminal procedure.
Strafsachen. Criminal cases or matters.
Strafvollstreckung. Infliction of punishment, execution of a sentence.
Strafvollziehung. Infliction of punishment, execution of a sentence.
Strafvollzug. Infliction of punishment, execution of a sentence.
Strandtriftige Güter. Wreckage and goods saved from stranded ships or found on the beach.
Strandung. Stranding.
Strandungsordnung. Statutory requirements as to notification of wreckage of a vessel.
Strassenrecht. Right of way.
Streitverkündung. Interpleader.
Stückgüter. Miscellaneous parcels, mixed cargo.
Summarisches Verfahren. Summary process.
Tarifvertrag. Collective labor contract.
Tatsächliche Gewalt. Actual control.
Taxirte Police. Valued policy.
Teilbesitz. Part possession.
Teilung. Partition.
Termin. Term-day, return day, trial day.
Testament. Will.
Testamentsvollstrecker. Executor of a will.
Thierquälerei. Cruelty to animals.
Todeserklärung. Declaration of death.
Todesstrafe. Death sentence or punishment of death.
Trassant. Drawer.
Trattat. Drawee.
Tratte. Draft, bill of exchange.
Treu und Glauben. Good faith.
Treue Hand. Trust.
Trunksucht. Dipsomania.
Üble Nachrede. Malicious slander.
Ueberliegezeit. Demurrage.
Uebertretung. Minor offense.
Unbewegliche Sachen. Immovables.
Uneheliches Kind. Illegitimate child.
Uneigentliche Bedingung. Unreal condition (not actually a condition).
Unfallversicherung. Accident insurance.
Ungerechtfertigte Bereicherung. Unjustified benefit, unjust enrichment.
Unlauteren Wettbewerb. Unfair competition.
Unmittelbarer Besitz. Direct possession.
Unmögliche Bedingung. Impossible condition.
Unterbrechung. Interruption (of statute of limitations).

Unterbrechung der Verjährung. Interruption of the prescription.
Unterdrücken von urkunden. Suppression of an instrument or document.
Unterhaltspflicht. Mutual rights and duties as to maintenance.
Unternehmer. Contractor.
Unterschlagung. Embezzlement.
Unterstützungwohnsitz. Place of poor relief, domicil.
Untersuchung. Inquest.
Untreue. Breach of trust.
Unverzüglich. Without (culpable) delay.
Unwesentlicher Bestandteil. Non-essential component part.
Unwirksam. Inoperative, invalid, ineffective, of no effect.
Unzüchtige Handlung. Lascivious or obscene conduct.
Unzüchtige Schriften. Obscene literature.
Urheberrecht. Author's right, copyright (law).
Urkunde. Instrument, document.
Urkundenfälschung. Forgery of instruments and documents.
Urteil. Judgment, opinion.
Urtheilsgründe. Grounds of decision.
Verantwortlichkeit. Responsibility, accountability.
Veräusserung. Alienation.
Veräusserungsverbot. Restraint on alienation.
Verbesserungsanstalt. Reformatory.
Verbrechen. Felony.
Verbindung. Incorporation.
Verbotene Eigenmacht. Unlawful interference.
Verbrauchbare Sachen. Consumable things.
Verein. Union.
Verein, eingetragener. Registered society.
Verein, nicht rechtsfähiger. Unincorporated society.
Vereinigung. Association.
Vereitelung der zwangsvollstreckung. Rendering judgment and execution null (by alienating or secreting property with intent to defraud creditors).
Verfahren (vorbereitendes). Preliminary proceeding.
Verfälschung von Lebensmitteln. Adulteration of food.
Verfassungsrecht. Constitutional law.
Verfrachter. Owner of a vessel chartered.
Verfügung. Disposition; order, ordinance, decree.
Verfügung von hoher Hand. Arrest of princes or rulers (Admiralty).
Verfügung von Todeswegen. Disposition *mortis causa,* disposition operative on death.
Verfügungsrecht. Right of disposal of something.
Verführung. Seduction.
Vergehen. Misdemeanor.
Vergiftung. Poisoning.
Vergleich. Compromise, composition.

Verhaftung. Arrest.
Verhandlung. Negotiation, proceeding, trial, hearing.
Verheimlichung. Concealment.
Verhör. Examination.
Verjährung. Outlawry of a right, prescription.
Verkehrsbedürfniss. Ordinary intercourse.
Verkündung. Pronouncement (of judgment).
Verladungsschein. Bill of lading.
Verlagsrecht. Law of publishers.
Verleihung. Grant.
Verleumdung. Defamation.
Verlöbniss. Betrothal.
Vermächtniss. Legacy.
Vermächtnissnehmer. Legatee.
Vermengung. Blending together or confusion of goods.
Vermischung. Mixing together, or confusion of goods.
Vermögensverwaltung. Management of property.
Vermögensverwaltung des Inhabers der elterlichen Gewalt. Management of the property of decedent by the person having the paternal power.
Vermögensvorteil. Pecuniary advantage.
Vernehmungstheorie. Doctrine of perception, that (in contract) receipt of the message is insufficient unless its contents have actually come to the knowledge of the addressee.
Veröffentlichung. Publication, promulgation.
Verpachtung. Leasing.
Verpfänder. Pledger.
Verpfändung. Pledge, mortgage.
Verpflichtungsschein, kaufmännischer. Mercantile promise to pay or deliver.
Versäumnisurteil. Judgment by default.
Verschollene. Untraceable persons.
Verschwägern. To become related by marriage.
Verschwägert. Related by marriage.
Verschwendung. Prodigality.
Versicherte, der. The insured.
Versicherung. Insurance; affirmation.
Versicherungsnehmer, der. The insurance taker.
Versicherungsverein auf Gegenseitigkeit. Mutual insurance society.
Versuch. Attempt.
Verteidigung. Defense.
Vertrag. Agreement, contract, treaty.
Vertragmässiges Güterrecht. Contractual régime of matrimonial property.
Vertragserbe. Contractual heir.
Vertrauensmann. Trustee; Men who prepare the jury lists.

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Vertreibung. Ejectment.
Vertretbare Sachen. Fungible things.
Vertreter. Agent.
Vertreter, gesetzlicher. Statutory agent.
Vertretung. Agency.
Verwahrungsvertrag. Agreement for the custody of a movable thing.
Verwaltungsrecht. Administrative law.
Verwandt, in der Seitenlinie. Kindred in the collateral line.
Verwandte in der graden Linie. Kindred in the direct line.
Verweisung. Expulsion, banishment; committal for trial.
Verwirkung. Foreclosure, forfeiture.
Verzeichnis. Catalogue, table, register, index.
Verzicht. Renunciation, relinquishment, forbearance.
Verzichtleistung. Renunciation, relinquishment, forbearance.
Verzug. Delay.
Volksversammlung. National assembly.
Volkswirtschaft. Political economy.
Vollkaufmann. True mercantile trader in the full sense of the word.
Vollmacht. Power of agency, power of attorney.
Vollstreckung. Execution.
Vollstreckungsbefehl. Writ of execution.
Voraus. Preferential benefit.
Vorausvermächtniss. Preferential legacy.
Vorbehaltsgut. Privileged separate property of spouses.
Vorerbe. Limited heir, or heir who takes first.
Vorführungsbefehl. Subpœna, warrant to appear before the court.
Vorkauf. Right of preemption.
Vorläufige entlassung. Provisional release.
Vorläufige ergreifung. Preliminary arrest or apprehension.
Vorläufiger Vormund. Interim guardian.
Vormerkung. Caution.
Vormund. Guardian.
Vorsatz. Wilful default.
Vorsätzlich. Wilfully, with intent.
Vorschlagsliste. List of proposed jurors.
Vorschuss. Advancement.
Vorstand. Directorate.
Voruntersuchung. Preliminary inquest or examination.
Vorverfahren. Preliminary proceedings.
Wahnsinn. Lunacy.
Wandelung. Rescission or cancellation of a sale.
Warenzeichen. Trademarks.
Wechsel. Bill of exchange.
Wechselnehmer. Payee.
Wechselordnung. Bills of Exchange Act.
Wechselrecht. Law of exchange.
Wegnahmerecht. Jus tollendi.
Weiterverweisung. Renvoi; transmission to a third jurisdiction.

Werkvertrag. Agreement for work.
Wertpapiere. Securities, negotiable or non-negotiable instruments.
Wesentlicher Bestandteil. Essential component part.
Wichtiger Grund. Cogent ground.
Widerkauf. Redemption.
Widernatürliche Unzucht. Unnatural obscenity, sodomy, pederasty.
Widerruf. Recall, revocation.
Widerspruch. Contradiction, objection.
Wiederaufnahme des Hauptverfahrens. New trial.
Wiederherstellung der ehelichen Gemeinschaft. Restitution of the conjugal community.
Wilddieberei. Poaching.
Willenserklärung. Declaration of intention.
Willenstheorie. Real intention.
Wirtschaftliche. Economic.
Wirtschaftliches Grundstück. Agricultural land.
Wittum. Dower, settlement in jointure.
Wohnsitz. Domicil.
Wucher. Usury.
Zahlungsunfähigkeit. Bankruptcy.
Zeitlohn. Time wage.
Zeuge. Witness.
Zeugnis. Testimony.
Zins. Interest, ground-rent.
Zivilprozess. Civil action.
Zivilprozessordnung. Code of civil procedure.
Zubehör. Accessories.
Zuchthaus. Penitentiary.
Zuchthausstrafe. Imprisonment in a penitentiary.
Zueignung. Appropriation.
Zug um Zug. Perform contemporaneously.
Zugehörig. Appurtenant.
Zuhälterei. Concubinage.
Zurückbehaltungsrecht. [Right of] lien.
Zurücknahme. Ademption (of a legacy).
Zusammenstoss. Collision.
Zuständigkeit. Competence, cognizance, jurisdiction.
Zustellung. Insinuation; delivery, conveyance.
Zustimmung. Assent, consent.
Zwang. Duress, force.
Zwangseinstellung. Coercion.
Zwangserziehung. Compulsory education.
Zwangsversteigerung. Sequestration of property in execution proceedings.
Zwangsverwaltung. Forced sale in execution proceedings.
Zwangsvollstreckung. Execution (on property); distraint.
Zweikampf. Duel.
Zwischenspediteur. Sub-agent.

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